City of MOUNT VERNON

Ordinance

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ORDINANCE NO. 3802

AN ORDINANCE OF THE CITY OF MOUNT VERNON, WASHINGTON, ADDING TWO NEW CHAPTERS TO THE MOUNT VERNON MUNICIPAL CODE WITH THE FIRST TO BE NAMED, MOUNT VERNON MUNICIPAL CODE (MVMC) CHAPTER 17.73, REGULATIONS TO ENCOURAGE AFFORDABLE HOUSING, WITH THE NEW CHAPTER CONTAINING DEVELOPMENT REGULATIONS TO ENCOURAGE THE CREATION OF NEW DWELLING UNITS FOR THOSE EARNING 80% OF THE AREA MEDIAN INCOME (AMI) AND BELOW; WITH THE SECOND NEW CHAPTER TO BE NAMED CHAPTER 16.34, PLATTING OF DUPLEX AND TOWNHOUSE STRUCTURES, WITH ADDITIONAL AMENDMENTS TO MVMC CHAPTERS 17.06 (DEFINITIONS), 17.09 (DISTRICTS ESTABLISHED – ZONING MAP), 17.12 (R-A RESIDENTIAL AGRICULTURAL DISTRICT), 17.15 (R-1 SINGLE-FAMILY DETACHED RESIDENTIAL DISTRICT), 17.18 (R-2 DUPLEX AND TOWNHOUSE RESIDENTIAL DISTRICT), 17.24 (R-3 MULTIFAMILY RESIDENTIAL DISTRICT), 17.27 (R-4 MULTIFAMILY RESIDENTIAL DISTRICT), 17.30 (P PUBLIC DISTRICT), 17.33 (R-O RESIDENTIAL OFFICE DISTRICT), 17.42 (LC LIMITED COMMERCIAL DISTRICT), 17.45 (DOWNTOWN DISTRICTS), 17.48 (C-2 GENERAL COMMERCIAL DISTRICT), 17.51 (C-3 COMMUNITY COMMERCIAL DISTRICT), 17.54 (C-4 NEIGHBORHOOD COMMERCIAL DISTRICT), 17.57 (M-1 LIGHT MANUFACTURING AND COMMERCIAL DISTRICT), 17.69 (PLANNED UNIT DEVELOPMENTS), 17.70 (DESIGN REVIEW), 17.81 (SPECIAL USES), 17.105 (VARIANCES), 17.119 (TRANSFER OR PURCHASE OF DEVELOPMENT RIGHTS), 14.05 (PROCEDURES), AND 14.15 (FEES) TO SUPPLEMENT, TO REMOVE INCONSISTENCIES BETWEEN THE NEW CHAPTER 17.73 AND OTHER EXISTING REGULATIONS, AND TO ADD PERMITS FEES APPLICABLE TO CHAPTERS 17.73 AND 16.34 MVMC

WHEREAS, many City residents struggle to afford their housing each month and a shortage of affordable housing exists in every major metropolitan area in the United States; and

WHEREAS, there is a high demand for rental units in the City and very low vacancy rates, especially for affordable units; and

WHEREAS, the U.S. Department of Housing and Urban Development (HUD) considers a household paying more than 30 percent of their income on housing as "cost burdened and may have difficulty affording necessities such as food, clothing, transportation and medical care". HUD's Comprehensive Housing Affordability Strategy (CHAS) Data Query Tool shows that 36 percent of Mount Vernon households (both rented and owned) are paying more than 30 percent of their income on housing; and

WHEREAS, the rationale for incentivizing the creation of housing units specifically for those earning 80% of the AMI or less is to address the affordable housing needs of City residents; and

WHEREAS, the regulations adopted herein are only one of many actions the City intends to undertake to implement the Goals, Objectives, and Policies of the City's Housing Element of the Comprehensive Plan; and

WHEREAS, the regulations adopted herein are intended to implement the Growth Management Act requirement to provide for housing opportunities for all economic segments of the community; and

WHEREAS, the City Council finds that the proposed development regulations contained herein are consistent with the City's Comprehensive Plan. Further, the City finds that the following Goals, Objectives, and Policies adopted within the Land Use and Housing Element directly relate to the proposed regulations contained within this Ordinance:

HOUSING GOAL 1: ENHANCE MOUNT VERNON'S CULTURAL AND ECONOMIC VITALITY BY ENCOURAGING THE DEVELOPMENT OF HOUSING SOLUTIONS OF ALL TYPES THAT PROVIDE FOR VARIED DENSITIES, SIZES, COSTS AND LOCATIONS THAT ARE SAFE, DECENT, ACCESSIBLE, ATTRACTIVE, APPEALING AND AFFORDABLE TO A DIVERSITY OF AGES, INCOMES, AND CULTURAL BACKGROUNDS.

OBJECTIVE 1.1: In City plans and zoning regulations, accommodate a variety of housing types that are attractive and compatible in design, and available to all economic segments of the community.

Policy 1.1.2: In recognition of community needs, the City shall maintain a variety of future land use classifications and implement zoning to accommodate a range of housing types with varying densities and sizes.

Policy 1.1.4: Continue to promote plans and policies that encourage in-fill residential projects in close proximity to neighborhood centers, shopping and retail facilities, parks, transit routes and other service uses.

Policy 1.1.5: Continue to promote plans and regulations that allow incentives such as bonus densities and flexible design standards that support and promote the construction of new innovative or affordable housing styles, compatible with the planned uses of surrounding sites. Ground related housing types such as cottages, townhouses, zero lot line developments and other types are examples of housing choices that promote individuality and ownership opportunities. Consider adopting new development regulations that would offer new ways to encourage these types of housing choices.

HOUSING GOAL 2: PROMOTE THE PRESERVATION, MAINTENANCE AND ENHANCEMENT OF EXISTING HOUSING AND RESIDENTIAL NEIGHBORHOODS THROUGHOUT THE CITY.

OBJECTIVE 2.1: Promote infill housing that is compatible with abutting housing styles and with the character of the existing neighborhood.

Policy 2.1.1: Encourage infill housing on vacant or underutilized parcels having adequate services, and ensure that the infill development is compatible with surrounding neighborhoods.

Policy 2.1.2 : Adopt development regulations that enhance existing single family neighborhoods by requiring significant changes in density be transitioned near these existing neighborhoods. Ways to transition from higher-density to existing single-family neighborhoods include (but are not limited to) the following: reducing densities and building heights closest to existing neighborhoods; and require landscaping treatments and fencing surrounding higher density developments.

Policy 2.1.3: Consider adopting regulations such as flexible lot sizes that encourage infill development on small lots consistent with the neighborhood's character.

Policy 2.1.4: Encourage the construction of attached and detached accessory dwelling units in single-family districts subject to specific development, design and owner occupancy provisions.

HOUSING GOAL 4: ENCOURAGE SAFE, DECENT, ACCESSIBLE, ATTRACTIVE AND AFFORDABLE HOUSING DEVELOPMENT THAT MEETS COMMUNITY NEEDS AND IS INTEGRATED INTO, AND THROUGHOUT, THE COMMUNITY INCLUDING AREAS OF HIGHER LAND COST WHERE GREATER SUBSIDIES MAY BE NEEDED.

OBJECTIVE 4.1: Encourage the creation of ownership and rental housing that is affordable for all households within the City, with a particular emphasis on low, very-low, and extremely-low income households as defined by the U.S. Department of Housing and Urban Development (HUD).

Policy 4.1.1: Evaluate the adoption of zoning regulations targeted at otherwise market-rate developments that require *or* incentivize a minimum percentage of new dwelling units and/or lots that are created (whether multi-family or single-family) be income restricted.

Policy 4.1.3: Evaluate the adoption of zoning regulations that provide bonuses in density for developments that create income restricted units aimed at those earning less than 80% of the area median income (AMI) with greater bonuses provided to housing reserved for those earning 60% of the AMI and below.

Policy 4.1.4: Encourage affordable housing to be dispersed throughout the City, within each Census tract, rather than overly concentrated in a few locations.

Policy 4.1.5: Where affordable housing is proposed together with market rate housing, affordable housing units should be comparable in design, integrated into the whole development, and should match the tenure of the whole development.

Policy 4.1.6: Maintain and explore enhancing regulatory incentives to encourage the production and preservation of affordable ownership and rental housing such as through density bonuses, impact fee reductions, permit fast-tracking, or other methods.

Policy 4.1.7: Ensure during development review processes that all affordable housing created in the city with public funds or by regulatory incentives remains affordable for the longest possible term; at a minimum 50 years.

WHEREAS, the City affirmatively furthers fair housing and is committed to focusing on the future, working together to build strong neighborhoods, developing a sound economy, and providing a safe community; and

WHEREAS, the City Council finds that:

1. The proposed amendments bear a substantial relation to the public health, safety and welfare.
2. The proposed amendments promote the best long term interests of Mount Vernon; and

WHEREAS, the City Council is aware that the affordable housing program adopted by this ordinance will create significant additional work for the Development Services Department that will require additional staffing in the future due to new regulations, processing, monitoring, and oversight required to implement these development regulations; and

WHEREAS, the City Council is aware that the additional residential density allowed by the regulations adopted in this Ordinance will require detailed monitoring of transportation levels-of-service and capacity within the City's Wastewater Treatment plant (WWTP). Additionally, City Council is aware that the additional residential density could result in impacts to transportation systems and the WWTP that could require mitigation sooner than currently adopted Capital Facility and Transportation Elements of the Comprehensive Plan anticipate; and

WHEREAS, the Department of Commerce was notified of the proposed amendments on September 26, 2019, an acknowledgement letter was received from Commerce dated October 2, 2019, and Commerce granted the City expedited review on October 31, 2019 (their identification number: 2019-S-732); and as such, the City is in compliance with RCW 36.70A.106 (1); and

WHEREAS, a SEPA Threshold Determination of Non-significance (DNS), non-project action, was issued on October 3, 2019 and published and routed to all applicable Federal, State, and Local Agencies, Utilities, and Tribes on October 7, 2019. The comment period for the DNS ended on October 21, 2019; and the appeal period for the DNS ended on October 31, 2019. There were no comments received or appeals filed; and,

WHEREAS, the requisite Planning Commission hearings held on November 5, 2019 and November 19, 2019; and the City Council hearing held on December 11, 2019 were preceded with appropriate notice published on October 7, 2019, November 5, 2019, and November 11, 2019; and

WHEREAS, the requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met; and

WHEREAS, the City is making a deliberate policy decision to require affordable housing created through the provisions of Chapter 17.73 MVMC (that will be codified with approval of this Ordinance) remain affordable in perpetuity. This policy decision based, in part, on the following documents that are part of the Council's legislative record:

- Hickey, Robert, etal. 2014. *Achieving Lasting Affordability through Inclusionary Housing. Lincoln Institute* (Produce Code WP14RH1).
- Khadduri, Jill, etal. 2012. *What Happens to Low-Income Housing Tax Credit Properties at Year 15 and Beyond?* (HUD's Office of Policy Development and Research).
- Grover, Michael. 2007. *Community Land Trusts Strive for Permanent Housing Affordability* (Federal Reserve Bank of Minneapolis).

WHEREAS, an example Covenant and Agreement required for affordable rental units per MVMC 17.73.090 is attached to this Ordinance identified as **Exhibit A**; and

WHEREAS, the City utilized the State Attorney General Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property for evaluating constitutional issues, in conjunction with and to inform its review of the Ordinance. The City has utilized the process, a process protected under Attorney-Client privilege pursuant to law including RCW 36.70A.370(4), with the City Attorney's Office which has reviewed the Advisory Memorandum and discussed this Memorandum, including the "warning signals' identified in the Memorandum, with decisions makers, and conducted an evaluation of all constitutional provisions potentially at issue and advised of the genuine legal risks, if any, with the adoption of this Ordinance to assure that the proposed regulatory or administrative actions did not result in an unconstitutional taking of private property, consistent with RCW 36.70A.370(2).

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON, DO ORDAIN AS FOLLOWS:

SECTION ONE. Recitals Incorporated. The City Council adopts the recitals set forth above as findings justifying adoption of this Ordinance and incorporates those recitals as if set forth fully herein.

SECTION TWO. PLANNING COMMISSION RECOMMENDATION ADOPTED.

A. Planning Commission Recommendation to the City Council:
At their public hearings on November 5, 2019 and November 19, 2019 the Commission considered the items presented by City staff, the testimony and written comments made by the public. Following their deliberation of all these items, the Planning Commission made a recommendation to adopt the amendments to the Mount Vernon Municipal Code that are contained in this Ordinance.

SECTION THREE. New Section. A new Chapter 17.73, Regulations to Encourage Affordable Housing, is added to the Mount Vernon Municipal Code as follows:

Chapter 17.73

REGULATIONS TO ENCOURAGE AFFORDABLE HOUSING

17.73.000 Purpose

The purpose of this Chapter is to encourage long-term affordable single-and-multi-family housing for those earning 80% of the Area Median Income (AMI) and below in the zones listed within this Chapter while ensuring neighborhood compatibility and quality living environments for all citizens.

17.73.010 Definitions

The following words when used in this Chapter shall be defined as indicated below.

A. **"Area Median Income"** or (AMI), means an income estimate developed with U.S. Census data and an inflation factor based on the Congressional Budget Office (CBO) forecast of the national Consumer Price Index (CPI). The U.S. Department of Housing and Urban Development (HUD) calculates and releases this data on a yearly basis.

B. **"Affordable Housing" and "Affordable Housing Unit"** are the additional dwelling units authorized by this chapter of the MVMC and are further defined as:

1. Owner-Occupied. A primary residence for an owner-occupied dwelling unit reserved for occupancy by eligible households, and affordable to households whose household annual income does not exceed eighty percent of the Mount Vernon-Anacortes, WA Metropolitan Statistical Area (MSA) median household income, adjusted for household size, as determined by the United States Department of Housing and Urban Development (HUD), with no more than 30 percent (30%) of the monthly household income being paid for monthly housing expenses. Monthly housing expenses defined as: mortgage, mortgage insurance, property taxes, property insurance, homeowners' dues and a utility allowance.
2. Renter-Occupied. A primary residence for a renter-occupied dwelling unit reserved for occupancy by eligible households, and affordable to households whose household annual income does not exceed eighty percent of the Mount Vernon-Anacortes MSA median household income, adjusted for household size, as determined by HUD, with no more than 30 percent of the monthly household income being paid for monthly housing expenses (rent and utility allowance).
3. Utility Allowance means an allowance approved by the City for basic utilities such as water, sewer, electricity, and gas payable by the renter, which unless otherwise approved in writing by the City, shall be equal to the utility allowance published from time to time by the Skagit County Housing Authority for the type of Unit, or, if the City determines that no reasonably

comparable figures are available from the Skagit County Housing Authority, the utility allowance shall be such an amount as the City determines is an adequate allowance for basic utilities, to the extent that such items are not paid by the Housing Owner. The Utility Allowance shall not include telephone, internet/wireless, or cable TV services.

C. **"Base Units"** are the number of dwelling units authorized by the underlying zoning of a site calculated using the density calculations found in MVMC Chapter 17.06.

D. **"Bonus Units"** are the additional dwelling units authorized through MVMC Chapter 17.73 that are required to be affordable housing for the life of the project under which the base units and/or the bonus density units are used as dwelling units.

E. **"Market Rate Units"** are housing units that can be single-family, duplex, or multi-family structures that have no ownership or rent restrictions; which means the seller or landlord is free to sell or rent at whatever price they wish to.

17.73.020 General Provisions

A. All of the below listed regulations shall apply to all new dwelling units created using the provisions of this Chapter.

1. Affordable housing units shall be required to be created before, or at the same time, as the base units. Applicants will not be allowed to construct market rate units first and wait to construct the affordable housing units unless a Development Agreement containing enforceable terms to guarantee the construction of the affordable housing units is approved by the City Council through a Type IV (quasi-judicial) process.
2. Developments using this Chapter of the Mount Vernon Municipal Code shall comply with the regulations of the zoning district within which a development is located unless this Chapter specifically states otherwise.
3. Prior to the issuance of any building permits, the City shall review and approve the location and unit mix of the bonus (affordable housing) units to ensure compliance with the following standards:
   i. The affordable housing units shall be intermingled with all other dwelling units in the development. This means that the affordable housing units are not allowed to be placed together in one isolated area of a plat, or on one particular floor of a multi-family structure.
   ii. The affordable housing units shall be available for occupancy in a time frame comparable to the availability of the rest of the dwelling units in the development.
   iii. The affordable housing units shall have floor areas that are no less than thirty percent smaller than the average floor areas for the market rate units within the same development. The floor areas being compared shall be for the same type of dwelling units, i.e. comparing market rate multi-family units to affordable multi-family units and market rate single-family units to affordable single-family units. For example, if the average floor area of the single-family detached units is 2,000 square feet then the affordable housing units are required to be 1,400 square feet or larger.
   iv. No less than fifty percent of the affordable housing units shall be required to have the same number of average bedrooms that the same type of market rate housing in the same development has. For example, if the average number of bedrooms for the multi-family units is three than no less than fifty percent of the affordable units will be required to have at least three bedrooms.
4. All properties with affordable housing units created under the provision of this Chapter shall record covenants and agreements and shall comply with the Density Transitions and Design Standards as prescribed in MVMC 17.73.090 and 17.73.100.
5. If after completing the initial density calculations required to determine the number of affordable and market rate housing units the number of units to be created changes the

Applicant shall be required to complete the same density steps to calculate the number of bonus units in total, and how many of the bonus units will be required to be Affordable Housing Units.

17.73.030 Encouraging Affordable Housing in Single-Family Zones (R-1)

A. In each of the single-family zones listed below in Table 1 additional dwelling units may be created if a specified number of new homes are Affordable Housing Units.

TABLE 1: AFFORDABLE HOUSING BONUS DENSITY IN SINGLE FAMILY RESIDENTIAL ZONES

ZONING DESIGNATION	EXISTING REQUIREMENTS FROM CHAPTER 17.15	AFFORDABLE HOUSING DENSITY BONUS	DENSITY BONUS PROVISIONS AND REQUIREMENTS
R-1, 7.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 7.26 du/acre Minimum Lot Size: 4,500	50% bonus density from 7.26 to 10.89 du/acre if 33.3% of the bonus units are Affordable Housing Units	• No minimum lot sizes • Bonus units can be single-family, duplexes, townhouses, or multi-family • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
R-1, 5.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 5.73 du/acre Minimum Lot Size: 6,000	50% bonus density from 5.73 to 8.60 du/acre if 33.3% of the bonus units are Affordable Housing Units	• No minimum lot sizes • Bonus units can be single-family, duplexes, townhouses, or multi-family • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
R-1, 4.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 4.54 du/acre Minimum Lot Size: 7,500	50% bonus density from 4.54 to 6.81 du/acre if 33.3% of the bonus units are Affordable Housing Units	• No minimum lot sizes • Bonus units can be single-family, duplexes, townhouses, or multi-family • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required

B. Following are the steps to calculate the number of bonus units in total, and how many of the bonus units will be required to be Affordable Housing Units. The steps listed below are required to be calculated in the order listed below. For added clarity, an illustrative example is also included.

The base density per MVMC Chapters 17.06 and 17.15 is calculated (assuming the maximum potential density per the underlying zoning designation).

1. The same density calculation is completed using the Affordable Housing Bonus Density (see the third column from the left in Table 1 above).
2. The base density (#1) is subtracted from the bonus density (#2). This is the number of bonus density units possible. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
3. 33.3% of the bonus units are required to be Affordable Housing Units. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
4. At the discretion of the Developer, the remaining 66.6% of the Bonus Units can be market rate or Affordable Housing Units.

5. Following is an example calculation using steps 1 to 5 above:
   Assume a net site area: 8.73 acres that is zoned R-1. 7.0

   Base Density Calculation: 8.73 acres x 7.26 du/acre = 63.38 single-family units

   Bonus Density Calculation: 8.73 x 10.89 du/acre = 95.07 single-family units

   BONUS DENSITY: Difference between standard zoning and this Chapter = 31.69 units

   31.69 x 33.3% = 10.65, round up to 11 units. This means that 11 units are required to be Affordable Housing Units and the additional 21 units are given to the developer to be market rate or affordable units, the developer gets to decide.

C. The dwelling units created shall:
   1. Comply with the setbacks and lot coverage listed in MVMC 17.70 applicable to the type of unit (i.e. single-family, duplex, multi-family).
   2. Multi-family structures shall comply with the land coverage, and distance between buildings as required by Chapter 17.24 MVMC.
   3. Be limited to three stories but not more than 35 feet so long as the requirements of MVMC 17.73.100 are met.
   4. But for the duplex exception listed below, the dwelling units from the base density calculation are required to be single-family detached units; however, there is no prescribed minimum lot size.
      i. A maximum of 20% of the single-family detached units calculated from the base density can duplex units. For example, if 20 single-family homes were permitted, an applicant could create 16 single-family homes and two duplexes.
   5. The bonus units can be single-family, duplexes, townhomes, or multi-family units.

17.73.040 Encouraging Affordable Housing in the Duplex and Townhouse Zone (R-2)

A. In the Duplex and Townhouse zone, listed below in Table 2, additional dwelling units may be created if a specified number of the new homes are Affordable Housing Units.

TABLE 2: AFFORDABLE HOUSING BONUS DENSITY IN DUPLEX AND TOWNHOUSE RESIDENTIAL ZONE

ZONING DESIGNATION	REQUIREMENTS FROM CHAPTER 17.18	AFFORDABLE HOUSING DENSITY BONUS	DENSITY BONUS PROVISIONS AND REQUIREMENTS
R-2 Duplex and Townhome- Residential Zone	Minimum and Maximum Density: 8.0 to 10.0 du/acre	Density doubles from 10.0 to 20.0 du/acre if 33.3% of the bonus units are Affordable Housing Units	• Bonus units can be duplexes, townhouses, or multi-family • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required

B. Following are the steps to calculate the number of bonus density units in total, and how many of the bonus units will be required to be Affordable Housing Units. The below listed steps are required to be calculated in the order listed below. For added clarity, an illustrative example is also included.

1. The base density per MVMC Chapters 17.06 and 17.18 is calculated (assuming the maximum potential density per the underlying zoning designation).
2. The same density calculation is completed using the Affordable Housing Bonus Density (see the third column from the left in Table 2 above).
3. The base density (#1) is subtracted from the bonus density (#2). This is the number of bonus units possible. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
4. 33.3% of the bonus units are required to be Affordable Housing Units. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
5. At the discretion of the Developer, the remaining 66.6% of the Bonus Units can be market rate or Affordable Housing Units.
6. Following is an example calculation using steps 1 to 5 above:

   Assume a net site area: 3.7 acres that is zoned R-2

   Base Density Calculation: 3.7 acres x 10 du/acre = 37 units

   Bonus Density Calculation: 3.7 x 20 du/acre = 74 units

   BONUS DENSITY: Difference between standard zoning and this Chapter = 37 units

   37 x 33.3% = 12.32. This means that 12 units are required to be Affordable Housing Units and the remaining 25 units are given to the developer to be market rate or affordable units, the developer gets to decide.

C. The duplex and/or townhouse units/developments shall:
   1. Comply with the setbacks listed in MVMC 17.70.
   2. Comply with the land coverage and parking as required by Chapter 17.18 MVMC.
   3. Be limited to three stories but not more than 35 feet so long as the requirements of MVMC 17.73.100 are complied with.
   4. The dwelling units from the base density calculation are required to be duplexes or townhomes; however, there is no prescribed minimum lot size.
   5. The bonus units can be duplexes, townhomes, or multi-family units.
   6. The creation of up to 35 dwelling units shall be an outright use and when 36 or more dwelling units are created they shall be permitted by a conditional use permit classified by MVMC 14.05 as a Type III permit.

17.73.050 Encouraging Affordable Housing in Multi-Family Zones (R-3 and R-4)

A. In the multi-family zones listed below in Table 3 additional dwelling units may be created if a specified number of the new homes are Affordable Housing Units.

TABLE 3: AFFORDABLE HOUSING BONUS DENSITY IN MULTI- FAMILY RESIDENTIAL ZONES

ZONING DESIGNATION	REQUIREMENTS FROM CHAPTER 17.24 and 17.27	AFFORDABLE HOUSING DENSITY BONUS	DENSITY BONUS PROVISIONS AND REQUIREMENTS
R-3 Multi-Family Residential	Minimum and Maximum Density: 10 to 15 du/acre	Density doubles from 15 to 30 du/acre if 33.3% of the bonus units are Affordable Housing Units.	• Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
R-4 Multi-Family Residential	Minimum and Maximum Density: 10 to 20 du/acre	Density doubles from 20 to 40 du/acre if 33.3% of the bonus units are Affordable Housing Units	• Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required

B. Following are the steps to calculate the number of bonus density units in total, and how many of the bonus units will be required to be Affordable Housing Units. The steps listed below are required to be calculated in the order listed below. For added clarity, an illustrative example is also included.

1. The base density per MVMC Chapters 17.06 and 17.24 or 17.27 (as applicable) is calculated (assuming the maximum potential density per the underlying zoning designation).
2. The same density calculation is completed using the Affordable Housing Bonus Density (see the third column from the left in Table 3 above).
3. The base density (#1) is subtracted from the bonus density (#2). This is the number of bonus density units possible. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
4. 33.3% of the bonus units are required to be Affordable Housing Units. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
5. At the discretion of the Developer, the remaining 66.6% of the Bonus Density Units can be market rate or Affordable Housing Units.
6. Following is an example calculation using steps 1 to 5 above:

   Assume a net site area: 5.5 acres that is zoned R-4

   Base Density Calculation: 5.5 acres x 20 du/acre = 110 units

   Bonus Density Calculation: 5.5 x 40 du/acre = 220 units

   BONUS DENSITY: Difference between standard zoning and this Chapter = 110 units

   110 x 33.3 = 36.63, round up to 37. This means that 37 units are required to be Affordable Housing Units and the remaining 73 units are given to the developer to be market rate or affordable units, the developer gets to decide.

C. The multi-family units/developments shall:
   A. Comply with the setbacks listed in MVMC 17.70.

B. Comply with the land coverage, distance between buildings, and parking as required by Chapter 17.24 MVMC.
C. Be limited to four stories and 45 feet so long as the requirements of MVMC 17.73.100 are complied with.
D. The creation of up to 35 dwelling units shall be an outright use and when 36 or more dwelling units are created they shall be permitted by a conditional use permit classified by MVMC 14.05 as a Type III permit.

17.73.060 Encouraging Affordable Housing in Planned Unit Developments

A. In each of the single-family zones listed below in Table 4 additional dwelling units may be created if the Applicant uses the Planned Unit Development process codified within MVMC Chapter 17.69 and if a certain number of the bonus dwelling units are Affordable Housing Units.

TABLE 4: AFFORDABLE HOUSING BONUS DENSITY IN PLANNED UNIT DEVELOPMENTS

ZONING DESIGNATION	REQUIREMENTS FROM CHAPTER 17.15	AFFORDABLE HOUSING DENSITY BONUS	DENSITY BONUS PROVISIONS AND REQUIREMENTS
R-1, 7.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 7.26 du/acre Minimum Lot Size: 4,500	Density doubles from 7.26 to 14.52 du/acre if 33.3% of the bonus units are Affordable Housing Units.	• No minimum lot sizes • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
R-1, 5.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 5.73 du/acre Minimum Lot Size: 5,000	Density doubles from 5.73 to 11.46 du/acre if 33% of the otherwise not allowed bonus units are occupied by those earning 80% AMI and below.	• No minimum lot sizes • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
R-1, 4.0 Single-Family Residential	Minimum and Maximum Density: 4.0 to 4.54 du/acre Minimum Lot Size: 6,000	Density doubles from 4.54 to 9.08 du/acre if 33% of the otherwise not allowed bonus units are occupied by those earning 80% AMI and below.	• No minimum lot sizes • Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required

B. PUDs incorporating bonus affordable housing units shall be allowed to have a minimum lot area for a proposed PUD of five gross acres, versus the 10 gross acres required per MVMC 17.69.030(A).
C. PUDs incorporating bonus affordable housing units shall be exempt from complying with MVMC 17.69.020(E).
D. PUDs incorporating bonus affordable housing units shall be required to comply with the neighborhood context and transitions codified in MVMC 17.69.080(C) and the density transitions outlined below in subsection 17.73.100. Should there be a conflict between these two code sections the regulation that will provide the larger buffer shall be applied.
E. PUDs incorporating bonus affordable housing units within a PUD shall be exempted from complying with MVMC 17.69.100, Modification of permitted uses – Multifamily units and 17.69.110, Modification of permitted uses – Duplex units, and shall instead be required to comply with the following modified regulations:

1. The placement of multifamily and/or duplex units (as defined within MVMC 17.06) within a PUD is discretionary by the city council. The city council may allow multifamily and duplex uses in single-family residential zones which are not otherwise permitted in the underlying zone so long as the requirements of this Chapter and Chapter 17.69 are complied with.
2. The total multifamily and/or duplex units shall comprise no more than 50% of the overall number of single-family dwelling units that are allowed and could physically be platted as part of the entire PUD. For example, if 100 single-family residential lots could be platted on a site, no more than 50 multifamily or duplex units can be constructed; which means that 50 single-family and 50 multifamily units (or 50 single-family, 30 multi-family and 20 duplex units) would be permitted so long as the overall density is not exceeded; and so long as city council makes a finding that the multifamily and/or duplex units can be placed and designed in such a way as to preserve the single-family character of the PUD and the surrounding area.
3. The multifamily units shall:
    i. Comply with the setbacks listed in MVMC 17.70.
    ii. Comply with the land coverage, distance between buildings, landscaping, parking and signage as required by Chapter 17.24 MVMC.
    iii. Be limited to four stories and 45 feet so long as the requirements of MVMC 17.73.100 are complied with.
    iv. No more than 75 multifamily units can be located in any one residential multifamily structure.
4. The duplex units shall:
    i. Comply with the setbacks listed in MVMC 17.70.
    ii. Comply with the land coverage, distance between buildings, landscaping, parking and signage as required by Chapter 17.18 MVMC.
    iii. Be limited to three stories but not more than 35 feet so long as the requirements of MVMC 17.73.100 are complied with.

17.73.070 Encouraging Affordable Housing in Downtown, Community and Neighborhood Commercial Zones (C-1, C-3 and C-4)

A. In the Community and Neighborhood Commercial zones listed below in Table 5 the maximum number of building stories and building height may be increased if a specified number of dwelling units that can be created as a result of the additional building story are Affordable Housing Units.

TABLE 5: AFFORDABLE HOUSING INCREASE IN BUILDING STORIES AND HEIGHT COMMUNITY AND NEIGHBORHOOD COMMERCIAL ZONES

ZONING DESIGNATION	ADDITIONAL STORY AND HEIGHT	NUMBER OF AFFORDABLE HOUSING UNITS REQUIRED	ADDITIONAL REQUIREMENTS
C-3 Community Commercial	Adding one additional building story in this zone means that structures can be 5 stories and 65 feet in height	33.3% of the bonus units that can be created as a result of adding an additional story to the building are Affordable Housing Units	• Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required
C-4 Neighborhood Commercial	Adding one additional building story in this zone means that structures can be 4 stories and 55 feet in height	33.3% of the bonus units that can be created as a result of adding an additional story to the building are Affordable Housing Units	• Covenants and Agreements per 17.73.090 required • Density transitions and Design Standards per 17.73.100 required

B. Following are the steps to calculate the number of bonus units in total, and how many of the bonus units will be required to be Affordable Housing Units. The steps listed below are required to be calculated in the order listed below. For added clarity, an illustrative example is also included.

1. The number of dwelling units to be created without the additional building story and height is calculated.
2. The number of dwelling units to be created with the additional building story and height is calculated.
3. The number of dwelling units from calculation (#1) is subtracted from the number of units calculated in (#2). This is the number of bonus units possible. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
4. 33.3% of the bonus units are required to be Affordable Housing Units. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
5. At the discretion of the Developer, the remaining 66.6% of the Bonus Units can be market rate or Affordable Housing Units.
6. Following is an example calculation using steps 1 to 5 above:

   Without the additional building story and height a structure will have 68 units

   With the additional building story and height the structure will have 90 units

   BONUS UNITS: Difference between with and without the additional story = 22 units

   22 x 33.3% = 7.32. This means that 7 units are required to be Affordable Housing Units and the additional 15 units are given to the developer to be market rate or affordable units, the developer gets to decide.

17.73.080 Required Affordable Housing for Rezones

All rezones approved after the effective date of the Ordinance codifying this Chapter of the Mount Vernon Municipal Code shall be required to provide affordable dwelling units as a condition of the rezone.

A. This Chapter shall apply to all zoning districts that allow the creation of dwelling units in any form, i.e. single-family, duplex, townhomes, stacked flats, apartments, condominiums, etc, and constitutes a floating overlay zone over these districts that shall be implemented when dwelling units are constructed following approval of a rezone.

1. All rezones shall be recorded with the Skagit County Auditor and shall include the requirements of this Chapter to ensure current and future property owners are fully aware of the requirements to create Affordable Housing Units when development occurs on the property.

B. Following are the steps to calculate how many of the dwelling units will be required to be Affordable Housing Units for rezoned properties. The steps listed below are required to be calculated in the order listed below. For added clarity, an illustrative example is also included.

1. The base density per the underlying, or pre-rezone zoning designation in conjunction with MVMC Chapter 17.06 is calculated (assuming the maximum potential density per the pre-rezone zoning designation).
2. The same density calculation is completed assuming the maximum potential density per the zoning designation the site will be rezoned to.
3. The base density (#1) is subtracted from the rezone density (#2). This is the number of dwelling units possible because the site was rezoned. When this calculation results in a fraction, the number of dwelling units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
4. 33.3% of the dwelling units possible as a result of the site being rezoned (i.e. the number of units calculated in #3 above) are required to be Affordable Housing Units. When this calculation results in a fraction, the number of Affordable Housing Units shall be rounded up to the next whole number (unit) if the fraction of the whole number is at least 0.50.
5. At the discretion of the Developer, the remaining 66.6% of the Bonus Units can be market rate or Affordable Housing Units.
6. Following is an example calculation using steps 1 to 5 above:

   Assume a net site area: 13.21 acres

   Rezone: site is zoned Public (P) and will be rezoned to Multi-Family Residential (R-3).

   Base Density Calculation: The base density of the Public zone would be 0 because this zone does not allow single-family, duplex, or multi-family units.

   Density Calculation Following Rezone: 13.21 x 15 du/acre (because one-half of the required parking will be provided beneath the habitable floors) = 198.15 multi-family units

   DENSITY ATTRIBUTED TO REZONE: 198.15 multi-family units

   198.15 x 33.3% = 65.98, round up to 66 units. This means that 66 units are required to be Affordable Housing Units and the additional 132 units can be market rate or affordable units, the developer gets to decide.

C. All of the dwelling units created following the rezone shall:

1. Comply with the setbacks and lot coverage listed in MVMC 17.70 applicable to the type of unit (i.e. single-family, duplex, multi-family).

2. As applicable, comply with the land coverage, lot size, building height, distance between buildings required by the zoning district the site was rezoned to.
3. Comply with all of the General Provisions outlined in MVMC 17.73.020.

17.73.090 Required Covenants and Agreements

Covenants and Agreements Required. Prior to final plat approval for subdivisions, or issuance of a certificate of occupancy for projects that do not require a subdivision, all properties with affordable housing units created under the provision of this Chapter shall, as applicable, record the below listed covenants and agreements with the Skagit County Auditor.

A. Covenant and Agreement to Ensure Affordability. These covenants and agreements shall ensure the affordability of the housing units, whether they are rented or owned, by requiring these units to be Affordable Housing Units in perpetuity.
    1. In perpetuity means never ceasing and unlimited with respect to time. The Covenant and Agreement shall be in effect for the life of the project for which either the restricted units and/or the bonus density units are used as dwelling units.
    2. The Covenant and Agreement shall be binding and shall run with the land.
    3. The Covenant and Agreement shall be approved by the Mount Vernon City Attorney in content and form; and the City Council shall authorize the Mayor to sign this document prior to recording. Following adoption of this Ordinance the City shall prepare and keep on file Covenant and Agreement forms substantively meeting the requirements for these documents.
    4. The Covenant and Agreement, at a minimum, shall include:
        a. Price restrictions for both home ownership and rental units.
        b. Homebuyer or tenant qualifications.
        c. How income will be monitored.
        d. For rental units, the content and form of yearly reports that will be required to be submitted to the City verifying income eligibility for affordable units.
        e. For owned units, the content and form of reports required to be submitted to the City to verify income eligibility for affordable units when ownership changes.
        f. Any other applicable topics necessary to monitor and enforce the affordability of the bonus units.
B. Covenant and Agreement for Landscape Buffers, Parking Facilities, Open Space Amenities, and Exterior of Buildings and Accessory Facilities. This covenant and agreement shall require property owners to maintain all landscaping and landscape buffers, open spaces with their associated improvements (e.g. benches, gazebos, etc) parking lot striping, paint on curbs, signage, exterior walls and decorative components of structures, and accessory facilities (e.g. mail box covers).
    1. The covenant shall be binding and shall run with the land.
    2. The Covenant and Agreement shall be approved by the Mount Vernon City Attorney in content and form; and the City Council shall authorize the Mayor to sign this document prior to recording. Following adoption of this Ordinance the City shall prepare and keep on file Covenant and Agreement forms substantively meeting the requirements for this document.
    3. The Covenant and Agreement, at a minimum, shall include:
        a. Exhibit maps and detailed descriptions of all structures and improvements subject to the Covenant and Agreement.
        b. Detailed outline of specific maintenance, repair, and replacement required for each improvement that is covered by the Covenant and Agreement.
        c. Estimated maintenance and/or replacement schedule with approximate costs of such maintenance/replacement.

17.73.100 Density Transitions and Design Standards

A. The purpose of the below listed landscaping buffers and height limitations is to preserve existing neighborhood character and to ensure existing neighborhoods and residential land use patterns have transitions in density and building heights as specified below.

1. Proposed lots shall be greater than or equal to the square footage and width found on all abutting property that is zoned or developed with residential structures with the following exceptions:
    i. If the abutting property consists of lots that are more than 9,600 square feet in size and are more than 95 feet in width the proposed lots are allowed to be a maximum of 9,600 square feet and 95 feet in width instead of being required to match the abutting lot sizes and widths.
    ii. If the developer chooses to create a 20-foot minimum forested buffer tract (as defined within MVMC 17.06.060) between the existing and proposed lots the proposed lots shall not be required to have a minimum square footage or lot width.
2. Proposed lots and structures that abut non-residentially zoned or used land shall be required to create or maintain a 20-foot minimum forested buffer tract between the newly created lots and structures and the non-residentially zoned or used property.
3. All proposed structures shall be limited to the maximum number of stories and building height that abutting properties are allowed under their respective zoning code with the following exceptions:
    i. Buildings that are proposed to be taller than the building height allowed under the respective zoning code for abutting structures shall observe an additional 1-foot setback in addition to what the underlying zoning requires for each additional 1-foot of building height in excess of what the abutting property is allowed. Following is an example of how this height transition is applied.

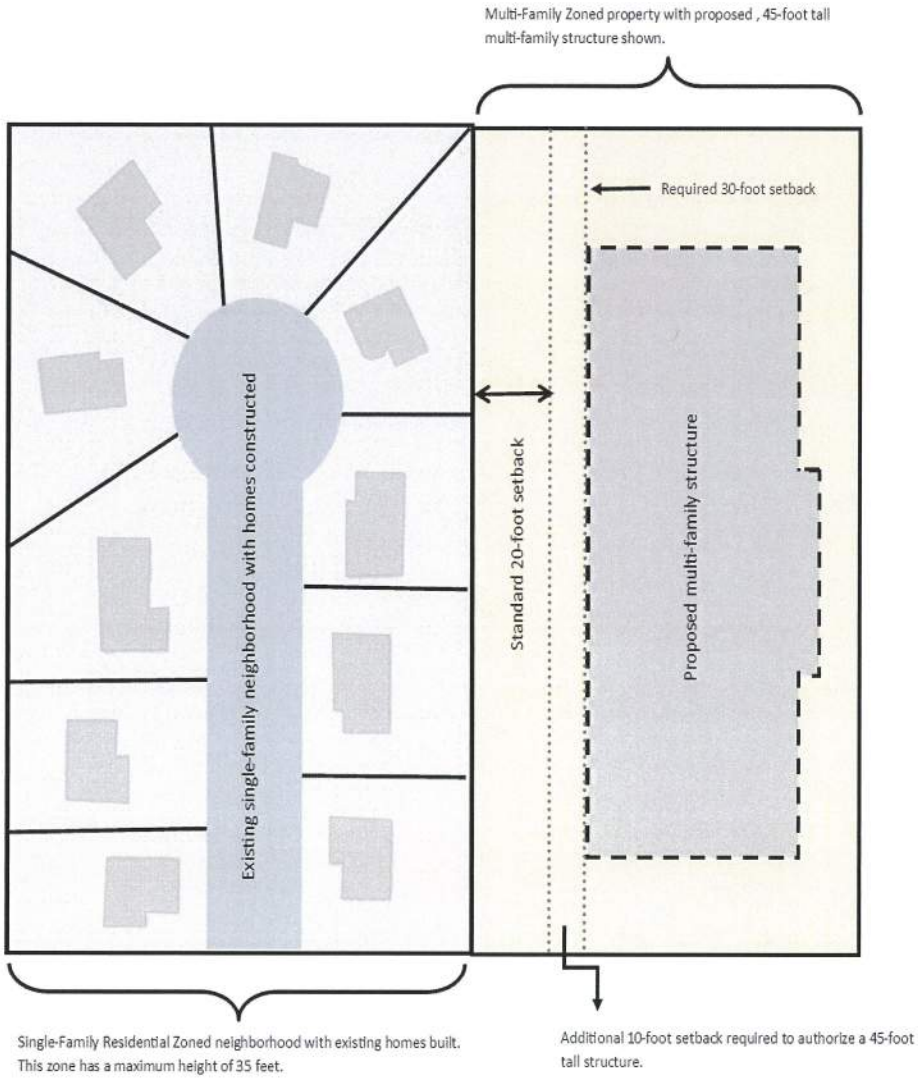
    Proposed is a multi-family structure that is 45 feet in height above average abutting grade that abuts single-family residential lots.

    The abutting single-family residential lots have a maximum height of 35 feet per their underlying zoning found in MVMC Chapter 17.15.

    The difference between the proposed height and the allowed height of the abutting lots is 10 feet.

    The proposed multi-family structure is required, per the underlying zoning, to observe a 20-foot rear yard setback. To have a structure that is 10 feet taller than structures on abutting properties are allowed, its rear yard setback is required to be increased from 20 to 30 feet.

Example Illustration of Additional Setback Required to Mitigate Additional Height Allowance



17.73.110 Accessory Dwelling Units

A. Accessory dwelling units shall be outright permitted uses in the single-family and Residential Agricultural zoning districts codified within Chapter 17.15 and 17.12 of the MVMC.

B. Accessory dwelling units are required to comply with the below listed regulations:

1. An accessory dwelling unit may be established in an existing single-family dwelling unit or in a detached structure on a legal lot by any one or by a combination of the following methods:
    i. Alteration of interior space of the dwelling; or
    ii. Conversion of an attic, basement, attached or detached private garage, or other previously uninhabited portion of a dwelling; or
    iii. Addition of attached living area onto an existing dwelling; or
    iv. Construction of a detached living area.
2. Each single-family dwelling on a legal building lot shall have not more than one accessory dwelling unit.
3. One of the dwelling units shall be occupied by one or more owners of the property as the owner's permanent and principal residence. "Owners" shall include title holders and contract purchasers. The owner shall file a certification of owner-occupancy with the Development Services Department prior to the issuance of the permit to establish an accessory dwelling unit.
4. The floor area of the accessory dwelling unit shall not exceed 1,000 square feet.
5. Three off-street parking spaces shall be provided for the principal and accessory dwelling unit to share. When the property abuts an alley, the off-street parking space for the accessory dwelling unit shall gain access from the alley, unless topography makes such access impossible.
6. The single-family appearance and character of the dwelling shall be maintained when viewed from the surrounding neighborhood. Only one entrance to the residential structure may be located on any street side of the structure; provided, that this limitation shall not affect the eligibility of a residential structure which has more than one entrance on the front or street side on the effective date of the ordinance codified in this chapter.
7. The accessory and principal dwelling unit shall comply with all applicable requirements of the Building, Fire and Zoning Codes in effect when a technically complete application for an Accessory Dwelling Unit is submitted to the City.
8. The owner of a single-family dwelling with an accessory dwelling unit shall file an owner's certificate of occupancy in a form acceptable to the city attorney no later than April 1st of each year. Any person who falsely certifies that he or she resides in a dwelling unit at the stated address to satisfy the requirements of this section shall be subject to the violation and penalty provisions of Title 19 of the MVMC.
9. A permit for an accessory dwelling unit shall not be transferable to any lot other than the lot described in the application.
10. All accessory dwelling units shall also be subject to the condition that such a permit shall automatically expire whenever:
    i. The accessory dwelling unit is substantially altered and is thus no longer in conformance with the approved plans; or
    ii. The subject lot ceases to maintain at least three off-street parking spaces; or
    iii. The applicant ceases to own or reside in either the principal or the accessory dwelling unit.

11. The applicant shall execute a Covenant and Agreement that shall be approved by the Mount Vernon City Attorney in content and form; that is required to be recorded with the Skagit County Auditor, providing notice to future owners or long-term lessors of the subject lot that the existence of the accessory dwelling unit is predicated upon the occupancy of either the accessory dwelling unit or the principal dwelling by the person to whom the accessory dwelling unit permit has been issued. The Covenant and Agreement shall also require any owner of the property to notify a prospective buyer of the limitations of this section and to provide for the removal of improvements added to convert the premises to an accessory dwelling unit and the restoration of the site to a single-family dwelling in the event that any condition of approval is violated.

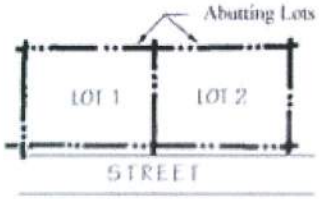
17.73.130 Other Affordable Housing Tools Offered by the City

A. See Chapter 16.34 MVMC that authorizes the platting and subsequent sale of duplex and townhouse units.
B. The creation of duplexes as an outright allowed use in the single-family residential districts codified in MVMC Chapter 17.15.
C. The creation of additional dwelling units, and the ability to construct additional duplexes and multi-family structures through the Planned Unit Development process codified in MVMC Chapter 17.69.
D. The creation of permanent supporting housing facilities authorized in MVMC Chapter 17.67.

SECTION FOUR. Section 17.06.010, A Definitions, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.06.010 A definitions.

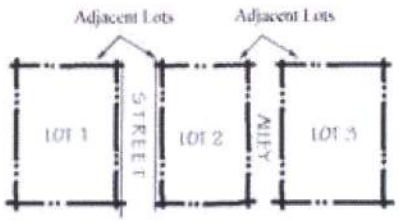
"Abutting" means to have boundaries that touch. When two parcels have a street or alley that runs between the two parcels, the two parcels are not abutting.



"Accessory building" means a subordinate building, the use of which is incidental to the use of the main building on the same lot where the building shall not exceed the height of and 50 percent of the existing gross floor area of the principal or main building, except where the principal or main building is less than 1,800 square feet in size, an accessory building of up to 900 square feet in size may be permitted.

"Accessory use" means a use incidental and subordinate in area, extent and purpose to the principal use and located on the same lot or in the same building as the principal or main use served on the same lot. This does not preclude the subject property from being subdivided through a binding site plan process at the time of development, or following the development of the proposed primary and accessory uses. Construction or initiation of an accessory use shall be concurrent with the primary permitted use or following the development and/or the commencement of the primary permitted use.

"Adjacent" means lots located across a public street, railroad, or right-of-way.



"Area Median Income" or (AMI), means an income estimate developed with U.S. Census data and an inflation factor based on the Congressional Budget Office (CBO) forecast of the national Consumer Price Index (CPI). The U.S. Department of Housing and Urban Development (HUD) calculates and releases this data on a yearly basis.

"Affordable Housing" and "Affordable Housing Unit" see the definition found in Chapter 17.73 MVMC.

"Agricultural use" means:
A. The growing of crops, except marijuana;
B. The sale of products produced on the premises except marijuana; provided, that the lot area is greater than two acres; and provided, that only one sales stand, 450 square feet or less, shall be permitted; and
C. The raising of livestock, except commercial hogs; provided, that the operation conforms to all applicable health laws; and provided, that no more than one hoofed animal (excluding sucklings) shall be permitted for each one-half acre lot area. In no case shall any building housing livestock be located less than 200 feet from any property line.

"Alley" means a public thoroughfare which affords access to abutting property and is usually not intended for general traffic circulation.

"Alteration" means a change or rearrangement of structural parts, or an enlargement by extension of the existing structural parts, of a building, or the moving of a building from one location to another, or any change in addition to or modification of occupancy, business, commercial, industrial or similar uses. The installation or rearrangement of partitions affecting more than one-third of a single floor area shall be considered an alteration.

Area, Building. "Building area" means the total ground coverage of a building or structure which provides shelter, measured from the outside of its external walls or supporting members or from a point four feet in from the outside edge of a cantilevered roof.

Area, Site. "Site area" means the total horizontal area within the property lines, excluding external streets.

"Awning" means a shelter, typically for a pedestrian walkway, that projects from and is supported by the exterior wall of a building. Awnings have noncombustible frames, but may have combustible coverings. Awnings may be fixed, retractable, folding or collapsible. Any structure which extends above any adjacent parapet or roof of a supporting building is not included within the definition of awning. (Ord. 3714 § 7, 2017; Ord. 3627 § 10, 2014; Ord. 3598 § 2, 2013; Ord. 3595 § 3, 2013).

SECTION FIVE. Section 17.06.090, S Definitions, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.06.190 S definitions.

"School" means any building or part thereof which is licensed by the state and is designed, constructed, or used for elementary and secondary education.

"Secure community transition facility" (SCTF) means, under RCW 71.09.020, a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under Chapter 71.09 RCW. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250 and any community-based facilities established under this chapter and operated by the Washington State Secretary of Social and Health Services or under contract with the Secretary.

"Setback" means the horizontal distance from the property line of the lot, or street or vehicular access easement or tract to the building line of the structure.

"Shelter care facility" means a residence that provides temporary lodging to the victims and/or families of victims of a crime or other traumatic event; provided, that the shelter care facility must meet the criteria set forth in subsection A of the definition of group home.

"Sight-obscuring" is an adjective applied to a fence or wall meaning that the view from outside the subject property is substantially blocked by an opaque construction such as abutting wood boards or masonry.

"Sign" means any commercial communication device, structure or fixture, visible from a public right-of-way and using graphics, pictures, symbols or written copy that is intended to aid an establishment or business in promoting the sale of a product, goods or services. For the purpose of this title, a sign shall not be considered to be building or structural design, national flags or flags of political subdivisions, symbolic flags or insignias of an institution, point of purchase product dispensers, holiday decorations, gravestones, historical site plaques, holiday displays, works of art, murals, and supergraphics as defined within this Chapter, that contain no sign copy.

"Site plan review committee" or "SPRC" means a committee composed of the development services director, city engineer, fire chief, and building inspector or their designees and additional departments, consultants and/or agencies deemed necessary by the development services director to adequately review the project.

"Special uses" means certain uses which because of special requirements, unique characteristics, or infrequent occurrence may be allowed in certain use districts only if approved by the hearing examiner or city council, pursuant to the criteria and procedures established in this title.

"Specialized housing unit for the elderly" means a room or group of rooms used by one or more individuals living separately from others, in a structure designed for the needs of elderly people. These establishments shall provide services such as the supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of an elderly person. These facilities shall include the provision of personal care, supervision of self-administered medication, limited health facilities, communal dining facilities and services such as housekeeping, organized social and recreational activities and transportation services. These facilities can include programs where the elderly are provided social programs during the day without overnight stays. These units are commonly referred to as: Alzheimer care centers, assisted living facilities, congregate residences, continuing care retirement facilities, extended care facilities, long-term care facilities, residential health care facilities, skilled nursing homes, and hospice facilities. These facilities are not multifamily housing for the elderly. All specialized housing for the elderly shall comply with the following provisions:

A. The structure(s) shall comply with the city's design standards and guidelines for multifamily buildings codified within Chapter 17.70 MVMC, but shall not have to comply with the standards for "Common Spaces/Usable Recreation Areas, Individual Outdoor Spaces, and Location of Parking."
B. Limited signage shall be allowed to identify specialized housing for the elderly facilities. One identification sign not exceeding 20 square feet in sign area per sign face, and one directory sign not exceeding 15 square feet per sign face shall be permitted for each street frontage; however, signs shall not be internally illuminated, and pedestal signs shall not exceed five feet in height.
C. The number of parking spaces shall reflect all of the proposed uses within a structure utilized for specialized housing for the elderly. The following calculations shall be used to determine the number of off-street parking spaces on these sites. However, an applicant can choose to have a parking study completed by a licensed traffic engineer to determine the number of off-street parking spaces for a given facility. If such a study is submitted to the city; the applicant will pay for the city's traffic engineer to review and approve the parking recommendations outlined within such a report. If a parking study yields less parking than what is outlined below, the applicant will be required to justify the conclusions of their report; and the city may require restrictions in the form of covenants on a property to ensure that adequate parking spaces are provided. For example, the city could require that a covenant be placed on the property stating that a certain category of elderly resident not be able to have a vehicle on the site; or they could be limited to a certain number of vehicle(s) that a resident could bring with them. The off-street parking areas shall comply with the dimensional standards outlined within Chapter 17.84 MVMC.

1. Three-quarters parking spaces shall be provided for each room housing an elderly resident where a license from the State Department of Health is not required; and
2. For areas within the structure where skilled nursing care is required such as: nursing homes, hospice, and other similar facilities, there shall be one parking space for each five hospital type beds that are required to be licensed through the State Department of Health; and
3. For areas within the structure where assisted living or other similar care is required there shall be one parking space for each four hospital type beds that are required to be licensed through the State Department of Health; and
4. There shall be a parking space for every employee during the maximum shift so that employees are not parking within spaces designated for the elderly residents or their visiting guests; and
5. There shall be parking areas designated for the buses and/or vans that the facility will utilize for transporting their elderly residents; and
6. There shall be parking spaces designated specifically for guest parking.

"Specified anatomical areas" means both of the following:
A. Less than completely and opaquely covered:

1. Human genitals, pubic region;
2. Buttock;
3. Breast below a point immediately above the top of the areola;

B. Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

"Specified sexual activities" means all of the following:
A. Human genitals in a state of sexual stimulation or arousal;
B. Acts of masturbation, sexual intercourse, or sodomy;
C. Fondling or other erotic touching of human genitals, pubic region, buttock, or breast.
Storage, Indoor. "Indoor storage" means a use engaged in the storage of goods and/or materials characterized by infrequent pick-up and delivery, and located within a building. The definition excludes hazardous material storage, self-service storage, warehousing and distribution.
Storage, Outdoor. "Outdoor storage" means a use engaged in outdoor storage, wholesale sales, rental, and distribution of products, supplies, and equipment. This definition excludes hazardous material storage, and warehousing and distribution.

"Story" means that portion of a building including between the upper surface of any floor and the upper surface of the floor above, except that the topmost story shall be that portion of a building included between the upper surface of the topmost floor and the ceiling or roof above. If the finished floor level directly above a basement, cellar or unused under-floor space is more than six feet above grade, as defined in this chapter, for more than 50 percent of the total perimeter, or is more than 12 feet above grade at any point, such basement, cellar or unused under-floor space shall be considered as a story.

"Street" means a public or private thoroughfare which affords access to abutting properties.
Street, Arterial. "Arterial street" means streets intended for higher traffic volumes and speeds as designated by the public works department.
Street, Collector. "Collector street" means a street providing access with higher traffic volumes than a typical residential, commercial, or industrial access street. Collector streets are designated by the public works department.

"Structure" means a combination of materials constructed and erected permanently on the ground or attached to something having a permanent location on the ground. Not included are mobile homes, Recreational Vehicles (e.g. motor homes, travel trailers, fifth wheel trailers, popup trailer, or truck camper), residential fences, retaining walls less than three feet in height, rockeries and similar improvements of a minor character. (Ord. 3474 § 3, 2009; Ord. 3429 §§ 33, 34, 35, 39, 40, 41, 2008; Ord. 3425 § 5, 2008; Ord. 3315, 2006; Ord. 3092 § 40, 2002; Ord. 3026 § 7(4), 2000; Ord. 2997 § 1, 2000; Ord. 2966 § 4, 1999; Ord. 2957 § 1, 1999; Ord. 2943 § 47, 1999; Ord. 2865 §§ 5, 6, 1998; Ord. 2631 § 1, 1994; Ord. 2591 § 1, 1994; Ord. 2352, 1989).

SECTION SIX. Section 17.09.010, Districts established and designated, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.09.010 Districts established and designated.
To classify, segregate and regulate the use of land, buildings and structures, the city is divided into the use districts identified in the following table. This table also identifies the comprehensive plan designation associated with each zoning district.

ZONING DESIGNATION	COMPREHENSIVE PLAN DESIGNATION	MINIMUM NET DENSITY	MAXIMUM NET DENSITY (See Note 1)	MINIMUM LOT SIZE (See Note 2)
RESIDENTIAL ZONING DISTRICTS:				
R-1, 7.0 Single-Family Residential	High Density Single-Family (SF-HI)	4.0 du/acre	7.26 du/acre	4,500 square feet
R-1, 5.0 Single-Family Residential	High Density Single-Family (SF-HI)	4.0 du/acre	5.73 du/acre	6,000 square feet
R-1, 4.0 Single-Family Residential	Medium Density Single-Family (SF-MED)	4.0 du/acre	4.54 du/acre	7,500 square feet
R-1, 3.0 Single-Family Residential	Medium Density Single-Family (SF-MED)	3.23 du/acre (See the land use element of the comprehensive plan for minimum density policies)	3.23 du/acre	9,000 square feet
R-2 Two-Family Residential District	Low Density Multifamily (MF-LO)	8.0 du/acre	10 du/acre	6,500 square feet for a duplex or townhouse unit

ZONING DESIGNATION	COMPREHENSIVE PLAN DESIGNATION	MINIMUM NET DENSITY	MAXIMUM NET DENSITY (See Note 1)	MINIMUM LOT SIZE (See Note 2)
R-3 Multifamily Residential District	Medium-High Density Multifamily (MF-MH)	10.0 du/acre	12 du/acre (Increased density up to a maximum of 15 du/acre may be achieved if at least 50% of the required parking spaces are located in an enclosed area beneath the habitable floors of the building or complex.)	N/A
R-4 Multifamily Residential District	Medium-High Density Multifamily (MF-MH)	10.0 du/acre	15 du/acre (Increased density up to a maximum of 20 du/acre may be achieved if at least 50% of the required parking spaces are located in an enclosed area beneath the habitable floors of the building or complex.)	N/A
R-A Residential Agricultural District	Agricultural with Density Transfer (AG)	1.24 du/acre (See the land use element of the comprehensive plan for minimum density policies)	1.24 du/acre	35,000 square feet
COMMERCIAL, INDUSTRIAL, OFFICE, PUBLIC AND MISCELLANEOUS ZONING DISTRICTS:				
Public (P)	Government Center Churches Schools Community or Neighborhood Park Open Space Cemetery South Kincaid Subarea	N/A	N/A	N/A
Residential Office District (R-O)	Residential Office/Professional Office	N/A	N/A	4,500 square feet
Health Care Development District (HD)	Health Care Development	N/A	N/A	N/A
Professional Office District (P-O)	Residential Office/Professional Office	N/A	N/A	N/A
Mobile Home Park District (MHP)	High Density Single-Family (SF-HI)	8 double-width or 10 single-width manufactured homes per acre	8 double-width or 10 single-width manufactured homes per acre	5 acres
Central Business District (C-1a)	Downtown Retail or South Kincaid Subarea (See note 3)	N/A	N/A	N/A
Central Business District (C-1b)	Support Commercial	N/A	N/A	N/A

ZONING DESIGNATION	COMPREHENSIVE PLAN DESIGNATION	MINIMUM NET DENSITY	MAXIMUM NET DENSITY (See Note 1)	MINIMUM LOT SIZE (See Note 2)
Central Business District (C-1c)	South Kincaid Subarea	N/A	N/A	N/A
General Commercial District (C-2)	Retail Malls, General Commercial, and Commercial/Industrial (See note 4)	N/A	N/A	N/A
Community Commercial District (C-3)	Community Retail, Mixed Use Center	N/A	N/A	N/A
Neighborhood Commercial District (C-4)	Neighborhood Retail, Mixed Use Center	N/A	N/A	N/A
Limited Commercial (LC)	Commercial/Limited Industrial	N/A	N/A	6,000 square feet
Commercial/Limited Industrial District (C-L)	Commercial/Limited Industrial	N/A	N/A	N/A
Light Manufacturing and Commercial District (M-1)	Commercial/Industrial	N/A	N/A	N/A
Industrial District (M-2)	Commercial/Industrial	N/A	N/A	N/A
Floodplain District (F-1)	Open Space/Cemetery	N/A	N/A	N/A

(1) R-1, 4.0, R-1, 5.0, R-1, 7.0, R-2, R-3 and R-4 zones are all authorized through Chapters 17.73, Regulations to Encourage Affordable Housing, and 17.119, Transfer or Purchase of Development Rights, to increase the maximum densities outlined within this table

(2) R-1, 4.0, R-1, 5.0, R-1, 7.0, R-2, R-3 and R-4 zones are all authorized through Chapters 17.73, Regulations to Encourage Affordable Housing, and 17.119, Transfer or Purchase of Development Rights, to decrease minimum lot sizes outlined within this table.

(3) C-1a zoned properties located south of Kincaid Street shall have a comprehensive plan designation of South Kincaid Subarea. All other C-1a zoned properties shall have a comprehensive plan designation of downtown retail.

(4) South Kincaid Subarea comprehensive plan designation exists for general commercial (C-2) zoned property south of Kincaid Street, east of Interstate-5 and west of the railroad tracks. This is the only area that shall be zoned C-2 with a comprehensive plan designation of South Kincaid Subarea. (Ord. 3749 § 6, 2018).

SECTION SEVEN. Section 17.12.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.12.030 Accessory uses.

Permitted accessory uses in the R-A district include:

A. Those accessory uses permitted in the R-1 districts;

B. Animal and implement barns, silos, sheds, accessory structures, and similar buildings needed in agricultural activities. Animal roaming areas shall be fenced;

C. Home occupations as set forth in Chapter 17.96 MVMC and subject to the conditions contained therein;

D. Each single-family residence is permitted to have one detached private garage; and

E. Each single-family residence is permitted to have one accessory structure that can be used as a shed to store tools or other household items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

F. Accessory Dwelling Units must comply with the requirements outlined in MVMC 17.73.110.

SECTION EIGHT. Section 17.12.045, Special uses, of the Mount Vernon Municipal Code is hereby repealed.

SECTION NINE. Section 17.15.020, Subdistricts – Lot area requirements, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.15.020 Subdistricts – Lot area requirements.

District R-1 is further subdivided into districts as provided in the following table. Density is calculated per the definition of such found in Chapter 17.06 MVMC.

ZONING DESIGNATION	COMPREHENSIVE PLAN DESIGNATION	MINIMUM NET DENSITY	MAXIMUM NET DENSITY (See Note 1)	MINIMUM LOT SIZE (See Note 2)
R-1, 7.0 Single-Family Residential	High Density Single-Family (SF-HI)	4.0 du/acre	7.26 du/acre	4,500 square feet
R-1, 5.0 Single-Family Residential	High Density Single-Family (SF-HI)	4.0 du/acre	5.73 du/acre	6,000 square feet
R-1, 4.0 Single-Family Residential	Medium Density Single-Family (SF-MED)	4.0 du/acre	4.54 du/acre	7,500 square feet
R-1, 3.0 Single-Family Residential	Medium Density Single-Family (SF-MED)	3.23 du/acre (See the land use element of the comprehensive plan for minimum and maximum density policies)	3.23 du/acre	9,000 square feet

(1) R-1, 4.0, R-1, 5.0, and R-1, 7.0 zones are all authorized through Chapters 17.73, Regulations to Encourage Affordable Housing, and 17.119, Transfer or Purchase of Development Rights, to increase the maximum densities outlined within this table.
(2) R-1, 4.0, R-1, 5.0, and R-1, 7.0 zones are all authorized through Chapters 17.73, Regulations to Encourage Affordable Housing, and 17.119, Transfer or Purchase of Development Rights, to decrease the lot sizes outlined within this table.
(Ord. 3429 § 52, 2008).

SECTION TEN. Section 17.15.030, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.15.030 Permitted uses.

The uses that are permitted as a matter of right in R-1 districts are:

A. Detached, single-family residential dwelling units. This use is limited to the placement of one such dwelling unit per certified lot and may consist of manufactured homes.

B. Group homes and shelter homes.

C. Municipal parks and playgrounds of less than one-half acre.

D. Planned unit developments may be permitted in the R-1, 7.0; R-1, 5.0; and R-1, 4.0 districts according to the procedures specified in Chapter 17.69 MVMC and may include additional uses recommended by the comprehensive plan (i.e., multifamily and/or commercial retail centers).

E. Residential subdivisions platted and approved after the effective date of the ordinance codified in this section may request approval as part of the subdivision application to provide duplexes~~;~~ provided, that all of the following conditions and requirements shall be met:

1. The lot area, setbacks, building height, maximum land coverage, landscaping, parking and signage shall be the same as the current zoning for the subdivision.

2. The design of each two-family unit shall be similar to other units in the subdivision and be designed to provide the appearance of a single-family unit by altering, for example, the location of front doors and windows, garages and access to garages, landscaping and fencing, etc. Additionally, the duplex units shall also comply with the City's Design Standards codified in MVMC Chapter 17.70.

3. The CC&Rs and final plat shall identify for future lot owners the locations of all two-family units within the subdivision.

4. No more than 20 percent of the single-family density that will actually be constructed within the subdivision can be duplexes. For example, if 20 single-family homes were permitted, an applicant could, if they meet all of the conditions above, create 16 single-family homes and two duplexes. (Ord. 3429 § 53, 2008).

F. Duplexes on lots of record subject to the City's Design Standards codified in MVMC Chapter 17.70 provided there are no other duplexes constructed on lots that are abutting or adjacent to the lot upon which a duplex is desired.

G. Rooms may be rented to not more than two persons, other than the family which occupies a single-family dwelling; provided, there is compliance with health, fire and building code requirements.

H. A day nursery, as defined in Chapter 17.06 MVMC; provided, they are state-licensed and care for more than six but less than 12 children, exclusive of the child care provider's own children, at one time.

SECTION ELEVEN. Section 17.15.040, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.15.040 Accessory uses.

Permitted accessory uses in R-1 districts include:

A. Playgrounds when developed in connection with a small school, park, or community clubhouse not meeting size criteria of the public (P) district; provided, that playfields developed to the limits of a property shall be fenced with a six-foot-high fence with landscaping meeting the requirements of Chapter 17.99 MVMC along each side adjacent to developed private property. In lieu of fencing, a 15-foot buffer may be permitted.

B. Home occupations, as defined in Chapter 17.96 MVMC, and subject to the home conditions contained therein.

C. Housing of Small Animals. An accessory building used for the housing of small animals or fowl shall not exceed 36 square feet in floor area when located on a minimum lot and neither the building nor the

fenced area for their roaming shall be closer than 25 feet to a property line, except by the recorded agreement of adjacent owners. The keeping of mink, goats, foxes or hogs is prohibited;
D. Gardening and fruit raising.
E. Each single-family residence is permitted to have one detached private garage.
F. Day nurseries, as defined in Chapter 17.06 MVMC; provided, they maintain a valid city business license, are state-licensed, and provide in-home care for 12 or fewer children, and provided there shall be no visible change in any dwelling or housekeeping unit, such as lighting, signs, exterior display, or outdoor storage of materials and equipment, which would attract attention to the day nursery conducted therein.
G. Each single-family residence is permitted to have one accessory structure that can be used as a shed to store tools or other household items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

H. Accessory Dwelling Units complying with the requirements outlined in MVMC 17.73.110.

SECTION TWELVE. Section 17.15.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

SECTION THIRTEEN. Section 17.15.055, Special uses, of the Mount Vernon Municipal Code is hereby repealed.

SECTION FOURTEEN. Section 17.18.010, Intent, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.18.010 Intent.
The intent of this chapter is to provide for areas within neighborhoods containing attached dwellings in the form of duplexes or townhouses at a minimum net density of eight to a maximum net density of 10 dwelling units per acre. However, Chapters 17.73, Regulations to Encourage Affordable Housing, and 17.119, Transfer or Purchase of Development Rights, can be used to increase the maximum density of this zoning district. (Ord. 3315, 2006; Ord. 2352, 1989).

SECTION FIFTEEN. Section 17.18.020, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.18.020 Permitted uses.
Permitted primary uses in the R-2 district include:
A. Those uses permitted in the R-1 district as long as the minimum net density for the district can be achieved.
B. Two-family dwelling unit also known as a duplex
C. Townhomes

D. Planned unit developments may be permitted according to procedures specified in Chapter 17.69 MVMC and may include additional uses recommended by the comprehensive plan (i.e., multifamily and/or commercial retail centers).
E. Municipal parks and playgrounds of less than one-half acre. (Ord. 3429 § 59, 2008).
F. Day nurseries; provided, that the size, location and design are compatible with the residential character of the neighborhood.

SECTION SIXTEEN. Section 17.18.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.18.030 Accessory uses.
A. Permitted accessory uses in the R-2 district include those uses permitted in the R-1 district, except that no buildings to house small animals or fowl other than normal household pets shall be permitted.
B. Each duplex or townhouse structure is permitted to have one accessory structure that can be used as a shed to store tools or other household items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

SECTION SEVENTEEN. Section 17.18.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

SECTION EIGHTTEEN. Section 17.24.010, Intent, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.24.010 Intent.
The intent of this chapter is to provide for areas within neighborhoods with good access containing multifamily residential development at a minimum net density of 10 to a maximum net density of 12 dwelling units per acre. However, Chapter 17.73 MVMC, Regulations to Encourage Affordable Housing can be used to increase the maximum density of this zoning district. (Ord. 3315, 2006; Ord. 2352, 1989).

SECTION NINETEEN. Section 17.24.020, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.24.020 Permitted uses.
Permitted primary uses in the R-3 district include:
A. Two-family and townhouse dwelling units that can meet the minimum density requirements of this zone.
B. Multifamily residential developments of 75 dwelling units or less. The definition of "density for multifamily zoned developments" found in Chapter 17.06 MVMC describes how the maximum density is calculated within this zone.

C. Municipal parks and playgrounds of less than one-half acre.
D. Professional offices, such as medical and dental, under 4,000 square feet in gross floor area, providing the siting criteria of MVMC 17.24.045(A) are met and mitigate the impacts on the neighborhood. (Ord. 3773, 2019; Ord. 3429 § 62, 2008).
E. Professional offices, such as medical and dental offices; provided, that:
1. The type, size and construction are compatible with the residential intent or character of the district.
2. The design, landscaping and arrangement of parking spaces are compatible with the residential character of the project and the neighborhood.
3. Access is from a street capable of handling the traffic generated from the use, and is located such that it is compatible with the residential use and will not create a traffic hazard or congestion.
F. Specialized housing for the elderly with total building area under 12,000 square feet.
G. Day nursery; provided, that the size, location and design are compatible with the residential character of the development and neighborhood.

SECTION TWENTY. Section 17.24.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.24.030 Accessory uses.
A. Permitted accessory uses in the R-3 district include those uses permitted in the R-1 district, except that accessory buildings for small animals or fowl, other than normal household pets, shall not be permitted.
B. Each multi-family structure is permitted to have one accessory structure that can be used as a shed to store tools or other household items as long as it complies with the following requirements:
1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

SECTION TWENTY-ONE. Section 17.24.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

SECTION TWENTY-TWO. Section 17.27.010, Intent, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.27.010 Intent.
The intent of this chapter is to provide for neighborhoods with close proximity to major arterials containing multifamily residential development at a minimum net density of 10 to a maximum net density of 15 dwelling units per acre. However, Chapter 17.73 MVMC, Regulations to Encourage Affordable Housing can be used to increase the maximum density of this zoning district. (Ord. 3315, 2006; Ord. 2352, 1989).

SECTION TWENTY-THREE. Section 17.27.020, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.27.020 Permitted uses.

Permitted primary uses in the R-4 district include the following:

A. Two-family and townhouse dwelling units that can meet the minimum density requirements of this zone.

B. Multifamily residential developments of 75 dwelling units or less. The definition of "density for multifamily zoned developments" found in Chapter 17.06 MVMC describes how the maximum density is calculated within this zone.

C. Municipal parks and playgrounds of less than one-half acre.

(Ord. 3773, 2019; Ord. 3429 § 68, 2008).

D. Professional offices, such as medical and dental offices; provided, that:

1. The type, size and construction are compatible with the residential intent or character of the district.
2. The design, landscaping and arrangement of parking spaces are compatible with the residential character of the project and the neighborhood.
3. Access is from a street capable of handling the traffic generated from the use, and is located such that it is compatible with the residential use and will not create a traffic hazard or congestion.

E. Specialized housing for the elderly with total building area under 12,000 square feet.

F. Day nursery; provided, that the size, location and design are compatible with the residential character of the development and neighborhood.

SECTION TWENTY-FOUR. Section 17.27.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.27.030 Accessory uses.

A. Permitted accessory uses in the R-4 district shall include those permitted in the R-1 district except that accessory buildings for small animals or fowl, other than normal household pets, shall not be permitted.

B. Each multi-family structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

SECTION TWENTY-FIVE. Section 17.27.040, Conditional uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.27.040 Conditional uses.

Uses permitted by conditional use permit and classified as a Type III permit in the R-4 district are as follows:

A. Churches; provided, that their principal access is from a secondary arterial street or greater and they shall conform to all the development standards and requirements of the public (P) zone and concurrent with approval the city shall require both the comprehensive plan and zoning designations to be changed to public (P) during the city's next comprehensive plan amendment cycle.
B. Community clubhouses and community association offices serving the immediate neighborhood;
C. Public utilities.
D. Specialized housing for the elderly exceeding 10,000 square feet in size and/or 15 units.
E. Multifamily residential developments of 76 dwelling units or more; provided, that no less than 50 percent of the sum of the building footprints shall be in open space, landscaping, and active play or activity areas. The definition of density for multifamily zoned developments found in Chapter 17.06 MVMC describes how the maximum density is calculated within this zone.
F. Neighborhood convenience uses; provided, that:

1. They are incorporated with the design of a multifamily structure or complex.
2. At least 50 percent of the planned residential units are constructed before the neighborhood convenience, professional office, restaurant or day care center can be constructed.
3. The number of dwelling units in such a complex exceeds 30.
4. No use shall exceed 1,500 square feet in area.
5. The design, landscaping and arrangement of parking are compatible with the residential character of the project and neighborhood.
6. Access is from a major street and is located such that it is compatible with the residential use and will not create a traffic hazard or congestion.
7. The multifamily density meets the definition for density for mixed use buildings or developments found within Chapter 17.06 MVMC.

G. Restaurants; provided, that they meet the same requirements for neighborhood convenience uses as set forth in subsection F of this section.
H. Bed and breakfast establishments which meet the following criteria:

1. The structure shall be owner-occupied and serve as the primary residence of the owner.
2. Adequate off-street parking of one parking space per guest room plus two spaces for the owner shall be provided but shall not be in the required front yard unless it is screened and is compatible with the surrounding neighborhood.
3. The structure shall meet all city building and fire codes to protect the safety of customers.
4. Individual rooms that are rented shall not contain cooking facilities.
5. The only meal to be provided to guests shall be breakfast and it shall only be served to guests taking lodging in the facility.
6. There shall not be any other bed and breakfast establishments within a 300-foot radius.
7. The maximum number of days that a guest may stay shall be limited to 14 consecutive days. Guests may not stay more than 60 days in any one year.
8. The building structure may not be altered or remodeled to the extent that the resulting structure would be incompatible with the residential character of the neighborhood. (Ord. 3429 § 70, 2008).

SECTION TWENTY-SIX. Section 17.27.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

SECTION TWENTY-SEVEN. Section 17.30.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.30.030 Accessory uses.
A. Permitted accessory uses in the P district shall include those uses and activities customarily associated with and necessary to the operation of the permitted primary use. This shall include day nurseries,

preschools, heliports, medical office buildings (MOB), when associated with, and included as, part of the master plan for a hospital, and college housing/dormitories (group living quarters for a student body), subject to the regulations of the R-4 multifamily residential district and included as part of a master plan for a college, and where it can be shown the particular accessory use is necessary to and customarily associated with the particular permitted use.

B. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

SECTION TWENTY-EIGHT. Section 17.33.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.33.030 Accessory uses.

A. Permitted accessory uses in the R-O district shall include those permitted in the R-1 district except that accessory buildings for small animals or fowl, other than normal household pets, shall not be permitted.

B. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

SECTION TWENTY-NINE. Section 17.42.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.42.030 Accessory uses.

A. Permitted accessory uses in the LC district shall include those permitted in the R-1 district except that accessory buildings for small animals or fowl, other than normal household pets, shall not be permitted.

B. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.

4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

SECTION THIRTY. Section 17.45.040, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.45.040 Accessory uses.
Permitted accessory buildings and uses in the C-1 district include:
A. Residence for watchman, custodian, manager or property owner of permitted use provided it is located within the same building as the principal use. This residence can be located on the ground floor so long as it is not visible from the street.
B. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:
1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.
C. Accessory dwelling unit subject to the requirements outlined in MVMC 17.73.110.
D. Card room.
E. Indoor storage. (Ord. 3749 § 3, 2018).

SECTION THIRTY-ONE. Section 17.48.025, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.48.025 Accessory uses.
Permitted accessory uses in the C-2 district include:
A. Residence for watchman, custodian, manager or property owner of permitted use provided it is located within the same building as the principal use.
B. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:
1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.
C. Mini-storage facilities

D. Commercial or public parking garages and/or commercial or public surface parking.
E. Card room (Ord. 3429 § 97, 2008).

SECTION THIRTY-TWO. Section 17.51.020, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.51.020 Permitted uses.
Permitted primary uses in the C-3 district include:
A. Commercial uses:
1. Retail stores
2. Personal services
3. Offices, banks, and financial institutions
4. Hotels, motels, and lodging houses
5. Eating and drinking establishments
6. Theaters, bowling alleys, skating rinks and other entertainment uses
7. Laundry and dry cleaning pickup stations
8. Shopping centers consisting of either:
   a. One to five retail uses occupying a lot area in excess of 60,000 square feet, or
   b. Five or more retail uses sharing a common parking area and intended to function as a unified shopping complex regardless of lot area
9. Drive-in banks and eating establishments
10. Gasoline service stations and automobile repair garages

B. Public and quasi-public uses:
1. Governmental buildings, administrative offices
2. Municipal parks of less than one-half acre
3. Churches; provided, that their principal access is from a secondary arterial street or greater and they shall conform to all the development standards and requirements of the public (P) zone and concurrent with approval the city shall require both the comprehensive plan and zoning designations to be changed to public (P) during the city's next comprehensive plan amendment cycle
4. Private vocational schools

C. Other uses specifically permitted:
1. Printing operations
2. Upholstery and furniture repair shops

D. On-site hazardous waste treatment and storage facilities as an accessory use to a permitted use; provided such facilities comply with the State Hazardous Waste Siting Standards and Mount Vernon and State Environmental Policy Act requirements.
E. Emergency shelter for the homeless; provided emergency shelter for the homeless shall not be located within a 1,000-foot radius of any other emergency shelter for the homeless and an existing shelter shall not expand the existing square footage of their facility to accommodate additional homeless, except that the hearing examiner may approve a location within a lesser distance or an increase in square footage of the existing facility to serve additional homeless if the applicant can demonstrate that such location will not be materially detrimental to neighboring properties due to excessive noise, lighting, or other interference with the peaceful use and possession of said neighboring properties; and provided further, an emergency shelter for the homeless shall have 100 square feet of gross floor area per resident as defined by the city building code (MVMC Title 15); and provided further, an emergency shelter for the homeless shall have any and all licenses as required by state and local law. (Ord. 3429 § 99, 2008).

SECTION THIRTY-THREE. Section 17.51.025, Accessory Uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.51.025 Accessory uses.

Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

SECTION THIRTY-FOUR. Section 17.51.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

SECTION THIRTY-FIVE. Section 17.51.070, Building height, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.51.070 Building height.

Maximum building height shall be four stories, but not more than 50 feet. These maximum limits may be increased to six stories or 65 feet if parking is provided beneath the habitable stories or through use of Chapter 17.73. Uninhabitable stories such as a church spire, fleche, campanile, nave, a dome and lantern or a clock tower may be permitted to exceed the height limit provided such structures are not intended as advertising devices. (Ord. 3775, 2019; Ord. 3315, 2006; Ord. 2352, 1989).

SECTION THIRTY-SIX. Section 17.54.030, Permitted uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.54.030 Permitted uses.

Permitted primary uses in the C-4 district shall include:

A. Commercial.

1. Barbershops and beauty shops
2. Drugstores
3. Bakeries or cafes
4. Dry cleaning and laundry pickup stations
5. Coin-operated laundries
6. Banks
7. Delicatessens
8. Movie rental businesses
9. Day nursery
10. Bookstores
11. Markets

B. Professional offices and offices for medical and dental service.

C. Other small scale commercial and office uses that are similar in nature and have similar impacts to the surrounding neighborhood as the permitted uses listed above. (Ord. 3606 § 6, 2013).

D. Day nurseries.

SECTION THIRTY-SEVEN. Section 17.54.035, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.54.035 Accessory uses.

Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

SECTION THIRTY-EIGHT. Section 17.54.045, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed.

SECTION THIRTY-NINE. Section 17.54.080, Building height, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.54.080 Building height.

Maximum building height shall be two stories but not more than 25 feet, except that if housing is included above commercial space, the height may be increased to three stories but not more than 35 feet. Building height can also be increased through use of Chapter 17.73. (Ord. 3315, 2006; Ord. 2352, 1989).

SECTION FOURTY. Section 17.57.023, Administrative conditional uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.57.023 Accessory uses.

A. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

B. Card room. (Ord. 3429 § 112, 2008).

SECTION FORTY-ONE. Section 17.60.030, Accessory uses, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.60.030 Accessory uses.

Permitted accessory uses in the M-2 district include:

A. Residences for watchmen or custodians

B. Employees' cafeterias and auditoriums

C. Parking lots for employees' cars or equipment used in the business

D. Each primary structure is permitted to have one accessory structure that can be used as a shed to store tools or other items as long as it complies with the following requirements:

1. The total building area of the accessory structure shall be no more than 120 square feet.
2. The accessory structure is required to be a single-story and is not allowed to be taller than the primary structure on the site.
3. The accessory structure shall be located in the rear yard and is required to maintain a minimum 5-foot setback from all property lines and all other structures.
4. The accessory structure shall not have a permanent heat source.
5. The accessory structure is intended to be for storage of tools or other household items and is not to be a space that is slept in.
6. The accessory structure is not allowed in critical areas or their associated buffers regulated under Chapter 15.40 MVMC.

SECTION FORTY-TWO. Section 17.69.020, Scope, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.69.020 Scope.

A. This chapter shall apply to all permitted uses within the R-1, 7.0, R-1, 5.0, R-1, 4.0, and R-2 residential districts and constitutes a "floating" overlay zone over these districts; provided, however, this chapter permits the development of limited multifamily and duplex housing and limited commercial development in the above specified residential zones, so long as the requirements of this chapter are satisfied.

1. This chapter may be applied where adequate vacant land exists to meet the standards and criteria of this chapter.

B. The PUD process provides an alternative to traditional development under prescriptive zoning and subdivision standards. The performance standards associated with a PUD allow for departure from strict compliance with zoning and subdivision development standards. However, all proposed PUD development standards that depart from strict compliance with zoning and subdivision standards must demonstrate that they allow for better design and are in the public interest.

C. A PUD application must be processed with either an application for short subdivision or standard subdivision approval. The scope of this chapter is to allow more innovative ways of designing such development applications, enabling applicants to take advantage of incentives, including flexible zoning standards, in exchange for public benefits.

D. PUDs are not intended to provide infill housing on smaller parcels in established residential areas of the city. (Ord. 3504 § 4, 2010).

E. MVMC Chapter 17.73 authorizes specific deviations from the requirements of this Chapter when an Applicant chooses to utilize Chapter 17.73. As such, the provisions of Chapter 17.73 supersede the provisions of this Chapter when there is a conflict.

SECTION FORTY-THREE. Section 17.70.020, Areas and Developments Requiring Design Review, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.70.020 Areas and Developments Requiring Design Review

A. The Design Review Standards for residential structures, contained within and adopted by reference, in this Chapter shall apply to all of the following:

1. All duplex and multifamily structures regardless of what zoning designation they are constructed within.
2. Subdivisions permitted through the Planned Unit Development process contained within MVMC Chapter 17.69.
3. Subdivisions that utilize Transfer of Development Rights permitted through MVMC Chapter 17.119.
4. Short plats or standard plats and all of the residential structures associated with said plats where the average lot size is 7,600 square feet or less. In calculating the average lot size only lots where single-family homes will be constructed can be utilized.
5. Development on existing lots not described in subsections 1 - 4 above, when a deviation from the development standards is requested.
6. Any building footprint expansion or addition (not including private garages or carports) over 50 percent of an existing multifamily structure or duplex.

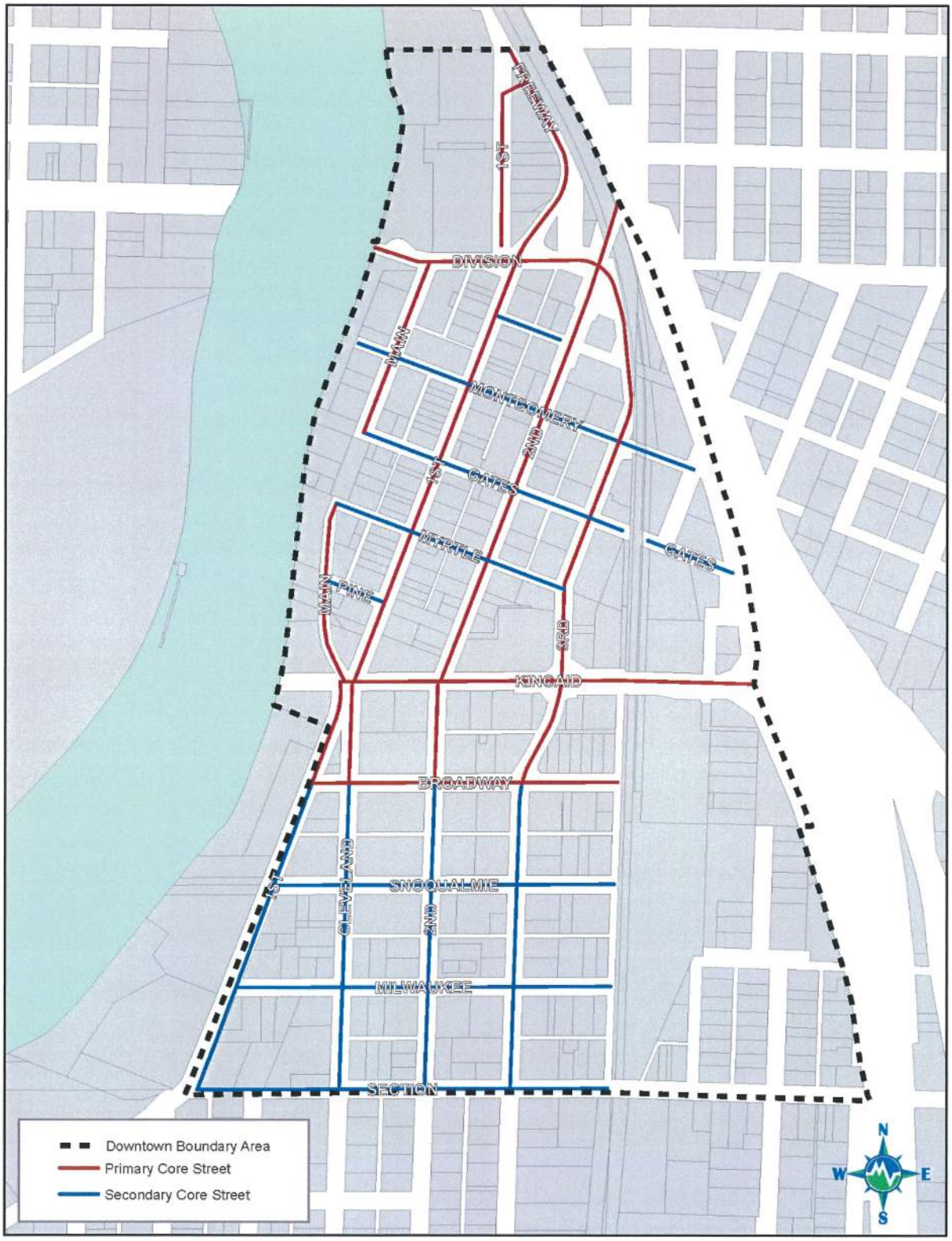
B. The Design Review Standards for areas in and surrounding the historic downtown identified in Map 1.0 (below) shall apply to all activities/work as noted below:

1. All proposals to build, locate, construct, remodel, alter or modify any facade on any structure or building, or other visible element of the façade, of the structure or building or site, including, but not limited to: landscaping, parking lot layout, signs, placement outdoor furniture or accessories, outdoor lighting fixtures, fences, walls and roofing materials. This includes exterior painting. See subsections 17.70.050 and 17.70.060 for information on how Design Review Standards apply to different types of projects.

C. Design Review Standards for areas in and surrounding the historic downtown identified in Map 1.0 (below) shall not apply to the following activities/work:

1. Ordinary maintenance and repairs as defined in this Chapter, examples include cleaning of exterior facades, re-roofing, and interior tenant improvements so long as the resulting improvements are not visible from abutting rights-of-way.

Map 1.0: GEOGRAPHIC AREAS SUBJECT TO CHAPTER 17.70



SECTION FORTY-FOUR. Section 17.81.110, Accessory dwelling units, of the Mount Vernon Municipal Code is hereby repealed.

SECTION FORTY-FIVE. Section 17.81.120, Variances, special uses permits and appeals for ADU, of the Mount Vernon Municipal Code is hereby repealed.

SECTION FORTY-SIX. Section 17.105.010, Authority to grant variance, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.105.010 Authority to grant variance.

A. Authority to Grant Variances

1. The community and economic development director may grant variances not exceeding 20 percent of the lot width, setbacks, maximum lot coverage, building height, parking, and landscape buffers from the provisions of the zoning code upon finding that all of the conditions set forth in MVMC 17.105.050 have been met.
2. The hearing examiner may grant variances from the terms of the zoning ordinances, from the official map ordinance and from other land use regulatory ordinances prescribed by city ordinance that are not covered within subsection (A)(1) of this section.
3. The community and economic development director shall specify the information which is required to be included in a variance application and the applicant shall provide appropriate application materials as required within Chapter 14.05 MVMC.
4. Following receipt of a completed application form requesting a variance the community and economic development department will follow the noticing requirements within Chapter 14.05 MVMC.
5. Following receipt of a completed application form requesting a variance from the zoning code, the community and economic development director shall determine if the request complies with all of the criteria set forth in MVMC 17.105.050.
6. Variances complying with section MVMC 17.105.010(A)(1): the community and economic development director may approve, approve with conditions, or deny the a variance request, or may forward the application to the hearing examiner for public hearing and decision as stipulated below. The community and economic development director's decision is the final city action on the variance request unless appealed to the hearing examiner as set forth below.
    i. The community and economic development director shall send his/her written decision to the applicant, adjacent property owners within 100 feet, and those parties of record. The community and economic development director shall give reasons for the decision and outline appeal procedures.
7. An approved variance shall become void after the expiration of one year from the date of final decision unless:
    a. A building permit application conforming to the approved variance is filed with the city; or
    b. A subdivision, short subdivision, or lot line revision application conforming to the approved variance is filed with the city; or
    c. The approved variance specifically provides for a longer time limit.

(Ord. 3429 § 173, 2008).

SECTION FORTY-SEVEN. Section 17.105.080, Appeal from decision – Time limits, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.105.080 Appeal from decision – Time limits.

A. The action by the hearing examiner on an application for a variance or an appeal from the decision of the community and economic development director shall be final and conclusive unless a party with standing files an appeal according to MVMC 14.05.190.

B. Appeal to Hearing Examiner.

1. Appeals to the Hearing Examiner are required to comply with the requirements outlined in MVMC Chapter 14.05.

SECTION FOURTY-EIGHT. Section 17.119.010, Permitted, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.119.010 Permitted.

The use of the R-1, 4.0 and R-2 residential zoning district areas as shown on the official zoning map of the city of Mount Vernon as a receiving zone for transfer or purchase of development rights from land zoned and/or designated open space, parks, wetland preserve or residential agriculture on the official city of Mount Vernon comprehensive plan map; the TDRs to receiving sites shall be permitted at the rate of one additional residential dwelling unit per entire net acre. The additional dwelling unit may be permitted in addition to dwelling unit bonuses for affordable housing as permitted under Chapter 17.73 MVMC. No fractional development rights shall be permitted. (Ord. 3515 § 3, 2011).

SECTION FOURTY-NINE. Section 17.119.025, Minimum lot size, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

17.119.025 Minimum lot size.

In no case can a lot created utilizing TDRs be smaller than 6,600. However, applications using TDRs and the provisions of MVMC Chapter 17.73 can create lots no smaller than 5,000 square feet. (Ord. 3315, 2006).

SECTION FIFTY. New Section. A new Chapter 16.34, Platting of Duplex and Townhouse Structures, is added to the Mount Vernon Municipal Code as follows:

Chapter 16.34

PLATTING OF DUPLEX AND TOWNHOUSE STRUCTURES

Sections:

16.34.010 Purpose

The purpose of this Chapter is to:

A. Allow duplex and townhouses structures to be platted with zero lot-lines to allow these units to be sold as individual, fee simple lots.
B. Promote affordable housing, efficient use of land and energy, and the availability of a variety of housing types in different locations.
C. Promote infill development.
D. Provide for the public health, safety and welfare of the public and purchasers and residents of such townhouse units.

16.34.020 Definitions

The following words used in this Chapter are specifically defined in MVMC Chapter 16.04:

"Party Wall Agreement" or "Common Wall Agreement" means a document prepared by an Attorney licensed in the State of WA that contains/addresses all of the following elements with regard to party walls: easements, general rules of law, utilities, use, alteration of party wall, common roof and common foundations, sharing of repair and maintenance, weatherproofing, maintenance, damage, repair and destruction, insurance, and must run with the land in perpetuity.

"Party Wall" or "Common Wall" means the foundation wall, the footing under such foundation wall, the shaft liner fire wall supported by the foundation and a roof sheathing or parapet, if existing, capping such fire wall which are part of the original construction of the Units located on the Lots and are located and constructed on or adjacent to the common Lot boundary line which separates two adjoining Lots, and which constitutes a common wall between adjoining Units, as such Party Wall may be repaired or reconstructed. A Party Wall is a structural part of and physically joins the adjoining Units on each side of the Party Wall. The term "Party Wall" shall also include any two (2) walls that generally meet this definition, and that together constitute the wall between two adjoining Units, even if such walls are separated by a de-minimus amount of air space.

"Conditions, Covenants and Restrictions" means a document that complies with applicable Federal and State laws and that contains/addresses all of the following elements:

1. Creation of an association of owners (e.g. Homeowner's Association or Governing Body) of the proposed lots that are required to provide for the control and maintenance of all improvements that will be owned by the Governing Body (usually a Homeowner's Association) such as, parking, access ways, open spaces, fences, street trees, stormwater facilities, etc.
2. Maintenance. The CC&Rs shall contain provisions establishing the obligation and duty of the governing body of the project to continually maintain the common areas in a manner which, at a minimum, ensures compliance with this Code and all other applicable laws, regulations, and standards.
3. Assessment for Maintenance of Common Areas and Facilities. To protect the public health, safety, and welfare, provisions shall be made for monthly or annual assessments that pay for maintenance of all common areas.
4. The CC&Rs shall run with the land and are required to be reviewed and approved by the city attorney and the Development Services Department prior to recording a final plat or short plat.
5. To achieve the purposes of this section, the declarations of conditions, covenants, and restrictions (CC&Rs) or other applicable documents relating to the management of common area and facilities shall be subject to approval by the Development Services Department and the City Attorney.

6. Amendments to the CC&Rs that would amend, delete, modify, or otherwise affect any provision required by this section shall require the prior written approval of the Development Services Director and the City Attorney. To that end, the amendment shall not be effective unless:
7. Any other provisions which the Development Services Director or City Attorney determine are necessary and reasonable for ensuring compliance with the provisions of the municipal code or the conditions of approval of the project.
8. The CC&Rs shall be recorded prior to or concurrently with of the recordation of the plat, which the plat shall contain the recording instrument numbers thereupon.

"Zero Lot Line" means a structure is placed with at least one wall on a property line.

16.34.020 Authority to Approve and Procedures

A. All duplex and townhouse developments creating 9 (or fewer) lots, tracts or parcels shall be required to:
    1. Submit the same application materials outlined in MVMC Chapter 16.32 for preliminary and final short plats plus the items outlined below under sub-section C.
    2. Follow the same procedural steps and requirements, outlined in MVMC Chapter 16.32 for preliminary and final short plats.
    3. Be subject to the provisions of Chapters 14.05, 16.04, 16.16, 16.20, and 16.28.
B. All duplex and townhouse developments creating more than 9 lots, tracts or parcels shall be required to:
    1. Submit the same application materials outlined in MVMC Chapters 16.08 and 16.12, respectively plus the items outlined below under sub-section C.
    2. Follow the same procedural steps and requirements outlined in MVMC Chapters 16.08 and 16.12, respectively.
    3. Be subject to the provisions of Chapters 14.05, 16.04, 16.16, 16.20, and 16.28.
C. In addition to the above-listed requirements, preliminary and final plats and short plats shall also be required to submit materials containing the following information:
    1. The location of the buildings in reference to the exterior boundaries of the property.
    2. Location, horizontal dimensions, and identification of the townhouse units within each building.
    3. Identification of the thickness of common walls/party walls between or separating the individual units.
    4. Designation and identification of all common elements.
    5. The location and identification of all utilities serving the townhouse units including connection points to each duplex or townhouse unit.
    6. A Party Wall Agreement.
    7. Conditions, Covenants and Restrictions.
    8. Additional wording shall be added to the surveyor's certification statement for townhouse plats as follows:

        "This plat substantially depicts the location and horizontal measurements of each unit and townhouse lot, lot designations, the building locations, all utilities serving the units, the location of parking, common elements, and storage spaces."

"Each duplex and townhouse unit created in this plat is served by individual water and sewer services from the public mains. Each unit owner shall own and be responsible for the operation, maintenance, and replacement of the water service line from the property shut-off valve located near the utility easement boundary to their unit. Additionally, each unit owner shall own and be responsible for the operation, maintenance and replacement of the sewer service line from their unit to the public sewer main, including the tapping saddle. The City reserves the right of ingress, egress and maintenance in private utility easements, access ways, and common areas".

16.34.030 Additional Platting and Lot Requirements

A. Each duplex or townhouse lot shall contain all elements of the individual unit's structure recognizing the common vertical walls will be shared with abutting units. The only exception to this is for detached garages that can be located on tracts or lots to be owned by the Homeowner's Association; however, the ownership of each garage space shall be identified on the recorded plat.
B. Each duplex or townhouse lot shall contain the attached private open space required per MVMC 17.70.
C. Each individual duplex or townhouse lot shall have a minimum width of 20 feet.
D. Zoning Requirements. Each duplex or townhouse structure (not individual lot) is required to comply with the lot coverage, building setbacks (excepting side yard setbacks where two dwelling units share a common wall), building height, parking, and landscaping required according to the properties' underlying zoning designation or as modified by Chapter 17.73 MVMC.
E. Subdivisions of sites containing previously constructed duplex or townhouse dwellings shall not be allowed unless all common walls meet, or are reconstructed to, current building code and fire code requirements for separately owned subdivided duplex or townhouse units, and all other standards of this Chapter are met.

SECTION FIFTY-TWO. Section 16.04, of the Mount Vernon Municipal Code shall be repealed and reenacted with the new section to read as follows:

16.04.050 Definitions generally.

A. Words used in the present tense shall include the future tense; the future tense shall include the present tense. The singular number shall include the plural number; the plural number shall include the singular number. The word "may" is permissive; "shall" is mandatory. "Lot" includes the words "plot," "parcel," "tract," and "site"; and "building" includes the word "structure." "City" shall mean the city of Mount Vernon, Washington, and "county" shall mean Skagit County, Washington.
B. The definitions found within Chapters 14.05 and 17.06 MVMC are hereby adopted by reference in their entirety as they are currently written or amended in the future. (Ord. 3428 § 5, 2008).

16.04.060 Block.

"Block" means a group of lots, tracts or parcels within well-defined and fixed boundaries. (Ord. 3428 § 6, 2008).

16.04.070 City engineer.

"City engineer" means the duly appointed engineer for the city of Mount Vernon, is also known as the public works director, or his/her designee. (Ord. 3428 § 7, 2008).

16.04.080 City treasurer.
"City treasurer" means the duly appointed clerk-treasurer for the city of Mount Vernon. (Ord. 3428 § 8, 2008).

16.04.085 Codes, Covenants and Restrictions.
"Codes, Covenants and Restrictions" means a document that complies with applicable Federal and State laws and that contains/addresses all of the following elements:

1. Creation of an association of owners (e.g. Homeowner's Association or Governing Body) of the proposed lots that are required to provide for the control and maintenance of all improvements that will be owned by the Governing Body (usually a Homeowner's Association) such as, parking, accessways, open spaces, fences, street trees, stormwater facilities, etc.
2. Maintenance. The CC&Rs shall contain provisions establishing the obligation and duty of the governing body of the project to continually maintain the common areas in a manner which, at a minimum, ensures compliance with this Code and all other applicable laws, regulations, and standards.
3. Assessment for Maintenance of Common Areas and Facilities. To protect the public health, safety, and welfare, provisions shall be made for monthly or annual assessments that pay for maintenance of all common areas.
4. The CC&Rs shall run with the land and are required to be reviewed and approved by the city attorney and the Development Services Department prior to recording a final plat or short plat.
5. To achieve the purposes of this section, the declarations of conditions, covenants, and restrictions (CC&Rs) or other applicable documents relating to the management of common area and facilities shall be subject to approval by the Development Services Department and the City Attorney.
6. Amendments to the CC&Rs that would amend, delete, modify, or otherwise affect any provision required by this section shall require the prior written approval of the Development Services Director and the City Attorney. To that end, the amendment shall not be effective unless:
7. Any other provisions which the Development Services Director or City Attorney determine are necessary and reasonable for ensuring compliance with the provisions of the municipal code or the conditions of approval of the project.
8. The CC&Rs shall be recorded prior to or at the same time of the recordation of the plat, which plat shall contain the recording instrument numbers thereupon.

16.04.090 Comprehensive plan.
"Comprehensive plan" means the coordinated plan that has been prepared for the physical development of the municipality; or any plan included in the comprehensive plan that has been prepared for the physical development of such municipality, and that designates among other things, plans and programs to encourage the most appropriate use of land and to lessen congestion throughout the municipality in the interest of public health, safety and welfare. All actions taken pursuant to this chapter shall be in compliance with the city comprehensive plan. (Ord. 3428 § 9, 2008).

16.04.100 Condominium unit.
"Condominium unit" is defined pursuant to RCW 64.34.216(1)(d). (Ord. 3428 § 10, 2008).

16.04.110 Council.
"Council" means the city council of Mount Vernon. (Ord. 3428 § 11, 2008).

16.04.120 County assessor.
"County assessor" means the duly elected county assessor. (Ord. 3428 § 12, 2008).

16.04.130 County auditor.
"County auditor" means the duly elected county auditor of Skagit County. (Ord. 3428 § 13, 2008).

16.04.140 County treasurer.
"County treasurer" means the duly elected Skagit County treasurer. (Ord. 3428 § 14, 2008).

16.04.150 Covenant.
"Covenant" means a binding and solemn agreement made by two or more individuals, parties, etc., to do or keep from doing a specified thing or things. (Ord. 3428 § 15, 2008).

16.04.160 Dedication.
"Dedication" means the deliberate appropriation of land by an owner for any general and public uses, reserving to himself no other rights than such as are compatible with the full exercise and enjoyment of the public use to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat or a short plat showing the dedication thereon and the acceptance by the public shall be evidenced by the approval of such plat for filing by the appropriate governmental unit. (Ord. 3428 § 16, 2008).

16.04.170 Existing street.
"Existing street" means a presently traveled way with a minimum width of 15 feet of hard surfacing, irrespective of whether it has been accepted by the city for maintenance. A hard-surfaced street shall be a street consisting of either portland cement or asphaltic concrete as a wearing surface. (Ord. 3428 § 17, 2008).

16.04.180 Health department.
"Health department" means the Skagit County Department of Health. (Ord. 3428 § 18, 2008).

16.04.190 Lot.
"Lot" means a fractional part of subdivided land having fixed boundaries being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include tracts or parcels of land. Lots shall be certified by the city according to the process outlined within Chapter 14.05 MVMC. (Ord. 3428 § 19, 2008).

16.04.200 Metes and bounds.
"Metes and bounds" means a description of real property that starts at a known point of beginning and describes the bearings and distances of the lines forming the boundaries of the property and is completed when the description returns to the point of beginning. (Ord. 3428 § 20, 2008).

16.04.210 Monument.
"Monument" means an object used to permanently mark a surveyed location. The size, shape and design of the monument are to be in accordance with standards specified by the city public works department. (Ord. 3428 § 21, 2008).

16.04.215 Party Wall Agreement.
"Party Wall Agreement" see the definition of such in Chapter 16.34 MVMC.

16.04.210 Party Wall.
"Party Wall" see the definition of such in Chapter 16.34 MVMC.

16.04.220 Pavement width.
"Pavement width" means the actual paved surface measured between faces of curbs of streets or from edge to edge of alley road surface. (Ord. 3428 § 22, 2008).

16.04.230 Plat.
A. "Plat" means a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other division and dedications.
B. "Preliminary plat" is a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and restrictive covenants to be applicable to the subdivision, and other elements of a plat or subdivision which shall furnish a basis for the approval or disapproval of the general layout of a subdivision.
C. "Final plat" is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this title.
D. "Short plat" is the map of representation of a short subdivision. A short plat consists of nine or fewer lots. (Ord. 3428 § 23, 2008).

16.04.240 Right-of-way.
"Right-of-way" or "R/W" or "R-O-W" means a strip of land dedicated to the city for street and utility purposes and on a portion of which a street is built or utilities are installed. (Ord. 3428 § 24, 2008).

16.04.250 Street.
A. "Street" means a dedicated and accepted public or private right-of-way for vehicular traffic. The word "street" includes the words "road," "drive," "boulevard" or "way."
B. "Arterial street" means an existing or proposed roadway designated an arterial by resolution of the city, or a roadway carrying or designed to carry more than 1,500 vehicles per day.
C. "Collector street" means a roadway designed to carry medium volumes of vehicular traffic, provide access to the major street system, and collect the vehicular traffic from the intersecting minor streets.
D. "Local or minor access street" means a street providing vehicular access to abutting properties.
E. "Cul-de-sac" means a street intersecting another street at one end and permanently terminated by a vehicular turnaround at the other end.
F. "Marginal access street" means a street that is parallel to and adjacent to a major arterial, that provides access to the properties abutting it and which separates the abutting properties from high-speed vehicular traffic.
G. "Accepted street" means a street that has been accepted for maintenance by the city. Usually any street that has or had been improved to the prevailing minimum city standard is regarded as an accepted street.
H. "Private street" means a privately owned and maintained access provided for by a tract, easement or other legal means.
I. "Alley" means a public thoroughfare which affords access to abutting property and is usually not intended for general traffic circulation. (Ord. 3428 § 25, 2008).

16.04.260 Street and utility standards of the city.
"Street and utility standards of the city" shall consist of requirements contained in the following: The latest edition of the Standard Specifications for Road, Bridge, and Municipal Construction prepared by the Washington State Chapter of APWA; city of Mount Vernon engineering standards approved by the city engineer; Criteria for Sewage Works Design prepared by Washington State Department of Ecology; and the design standards for streets of the city outlined in MVMC Title 16. (Ord. 3428 § 26, 2008).

16.04.270 Subdivider.
"Subdivider" means any person, firm or corporation who subdivides or develops any land deemed to be a subdivision and is also referred to as the "applicant." (Ord. 3428 § 27, 2008).

16.04.280 Subdivision, short.
"Short subdivision" means the division of an area into nine or fewer lots, tracts or parcels. (Ord. 3428 § 28, 2008).

16.04.290 Subdivision, standard.
"Subdivision" means the division of land into 10 or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and shall include all re-subdivision of land. (Ord. 3428 § 29, 2008).

16.04.300 Zero Lot Line
"Zero Lot Line" see the definition of such in Chapter 16.34 MVMC..

16.04.300 Plat.
Repealed by Ord. 3428. (Ord. 1950 § 1(3)(27), 1979).
16.04.310 Plat certificate.
Repealed by Ord. 3428. (Ord. 1950 § 1(3)(28), 1979).
16.04.320 Right-of-way.
Repealed by Ord. 3428. (Ord. 1950 § 1(3)(29), 1979).
16.04.330 Street.
Repealed by Ord. 3428. (Ord. 1950 § 1(3)(30), 1979).
16.04.340 Street and utility standards of the city.
Repealed by Ord. 3428. (Ord. 2632 § 1, 1994; Ord. 1950 § 1(3)(31), 1979).
16.04.350 Subdivider.
Repealed by Ord. 3428. (Ord. 1950 § 1(3)(32), 1979).
16.04.360 Subdivision.
Repealed by Ord. 3428. (Ord. 1950 § 1(3)(33), 1979).

SECTION FIFTY-THREE. Section 14.05.060, Permit classification table, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

14.05.060 Permit classification table.

Land Use Permit/Action	Permit Type					
	I	II	III	IV	V	VI
Administrative Determination	X					
Accessory Dwelling Unit per MVMC 17.73.100	X					
Binding Site Plan, Final	X					
Binding Site Plan, Preliminary		X				
Boundary Line Adjustment	X					
Building Permit SEPA Exempt	X					
Code Interpretation	X					
Comprehensive Plan Map or Text Amendments						X
Administrative Conditional Use Permit		X				
Conditional Use Permit			X			
Conditional Use Permit for EPFs				X		

Land Use Permit/Action	Permit Type					
	I	II	III	IV	V	VI
Critical Area Ordinance Reasonable Use Exception, Variances and Appeals per MVMC 15.40.130			X			
Design Review with Building Permit, or Administrative Design Review	X					
Design Review with Hearing Examiner Land Use Permit			X			
Design Review by Design Review Board			X			
Design Review Waiver per Chapter 17.70 MVMC	X		X			
Development Regulation Text Amendments to Chapter 3.40 MVMC and MVMC Titles 15, 16 and 17						X
Development Regulation Text Amendments to Chapters Except Chapter 3.40 MVMC and MVMC Titles 15, 16 and 17					X	
Environmental Review		X				
Fence or Wall Permit	X					
Fill and Grade Permit I	X					
Floodplain District Development Permit				X		
Historic Structure – Designation				X		
Historic Structure – Exterior Alteration		X				
Home Occupation – Type I or Exemption	X					
Home Occupation – Type II		X				
Land Clearing Permits and Management Plans		X				
Land Clearing Moratorium Removal			X			
Land Clearing Single-Family Residential Moratorium Exception		X				
Landscape Modifications per MVMC 17.93.080	X					
Lot Certification	X					
Major Modification	X	X	X	X		
Master Plan Approval per MVMC 17.30.090				X		
Minor Modifications	X					
Model Home Permit	X					
Nonconforming Use – Ordinary Maintenance or Repair	X					
Nonconforming Use – Certificate of Use or Occupancy	X					
Nonconforming Use – Special Permission to Enlarge, Expand, or Reconstruct				X		
Plat, Preliminary				X		

Land Use Permit/Action	Permit Type					
	I	II	III	IV	V	VI
Plat, Final					X	
Planned Unit Development, Final					X	
Planned Unit Development, Preliminary				X		
Rezones Consistent with Comprehensive Plan				X		
Shoreline Conditional Use Permit			X			
Shoreline Exemption	X					
Shoreline Substantial Development Permit		X				
Shoreline Variance			X			
Short Plat, Preliminary		X				
Short Plat, Final	X					
Site Plan Approval	X					
Site Plan Approval per MVMC 17.39.150				X		
Special Use Permit			X			
Street Vacations Subject to Procedural Requirements Outlined in Chapter 35.79 RCW						X
Street Design Modifications per Chapter 16.16 MVMC	X					
Temporary Homeless Encampment		X				
Temporary Use Permit Per Chapter 17.92 MVMC	X					
Transfer of Development Rights – Certificate of Available Rights	X					
Transfer of Development Rights – Approval to Utilize	X					
Transportation Concurrency when > 75 PM Peak Hour Trips Are Generated				X		
Variances			X			
Waivers per MVMC 14.10.110, Chapter 16.20 MVMC, and MVMC 17.84.130				X		
Zoning Boundary Determination per MVMC 17.09.040			X			
Zoning Variances Not Exceeding 20 Percent of Lot Width, Setbacks, Lot Coverage, Building Height, Parking, and Landscape Buffers		X				

SECTION FIFTY-FOUR. Section 14.05.150, Notice requirements, of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

14.05.150 Notice requirements.

A. Notice of Application.

1. Applicability. A notice of application is not required for actions that are classified as Type I permits per MVMC 14.05.060; or actions specifically exempted under MVMC 14.05.040, but is required for all other development permit applications subject to notice requirements, except for binding site plans.
2. Content. Within 30 days of issuing a letter stating that an application is technically complete per MVMC 14.05.110(D), and as long as CEDD staff has not requested additional or corrected information per MVMC 14.05.110(D), the city shall issue a notice of application (NOA). The notice shall, at minimum, include the following:
a. Owner, applicant and contact name;
b. Project name and city file number;
c. Date of counter completeness and technical completeness;
d. A nonlegal project location description;
e. Project description;
f. A listing of all permits/approvals requested;
g. The date the 14-day public comment period expires;
h. The date, time, and place of a public hearing if one has been scheduled; and
i. The following, or equivalent, statements: "To receive additional information regarding this project, contact the community and economic development department and request to be made a party of record" and "To become a party of record or to obtain further information regarding this project, contact the city of Mount Vernon community and economic development department at 910 Cleveland Avenue, Mount Vernon, WA 98273, (360) 336-6214."
3. Distribution. Notices of application shall be made as follows:
a. By publication in the newspaper of record, except for the following permits:
i. Administrative conditional use;
ii. Fill and grade II;
iii. Exterior alteration of a historic structure;
iv. Type II home occupation;
v. Short plat;
vi. Zoning variance not exceeding 20 percent of the lot width, setbacks, lot coverage, building height, parking and landscape buffers;
b. By posting of a land use notice board placed by the applicant in a conspicuous location on each public street frontage bordering the subject property and visible by members of the public; and
c. By mail as follows:
i. For administrative conditional use permits, notice shall be mailed to adjacent and abutting property owners.
ii. For planned unit developments, notice shall be mailed to property owners within 500 feet of the project.
iii. For variances not exceeding 20 percent of the zoning requirements, notice shall be mailed to all property owners within 100 feet of the property.
iv. For all other applications, including annexations and short plats, notice to all owners located within the boundaries of a project and within 300 feet of the boundary of the development permit. If the applicant owns property abutting or adjacent to the boundary of the development permit, notice shall be sent to the owners of real property within 300 feet of any portion of the boundaries of abutting or adjacent properties owned by the applicant.
v. In addition, the notice shall be mailed to all city departments and agencies with jurisdiction as well as any other person who requests such notice in writing.
vi. With the submittal of a development permit that requires notice be sent via mail, the applicant shall provide mailing labels to the CEDD for their use in sending out notices. The applicant shall obtain the names and address of all property owners within the notification areas, specified above, from the Skagit County assessor's office. The list of property owners must be no older than 30 days. The applicant shall be responsible for updating the property owner list and the associated labels as their project is processed by the CEDD.

4. Optional Additional Public Notice. If the city deems additional notice necessary for a particular project application, the city may require additional public notice. The director shall make the sole determination if optional public notice is necessary, in addition to the notice requirements of this chapter. The city may require the applicant to provide any or all of the following additional forms of notice:
a. Mailed notice to owners and/or occupants of real property beyond the notification radius outlined above;
b. Mailed notice to public or private groups with known interest in a certain proposal or in the type of proposal being considered;
c. Mailed or published notice to the news media; and/or
d. Publication of additional notices in regional, neighborhood, or trade publications.
B. Notice of Administrative Decisions. The CEDD shall notify all parties of record, the project proponent, and affected government agencies of any Type II administrative decisions. Notification must be made by mail and shall include:
1. A description of the decision(s), including any conditions of approval;
2. A statement explaining where further information may be obtained;
3. Any threshold environmental determination issued for the project, if an application subject to an administrative approval requires an environmental threshold determination; and
4. The decision and a statement that the decision will be final unless an appeal to the hearing examiner is filed with the CEDD within 14 days of the date of the decision.
C. Notice of Public Hearing. Notice of a public hearing for all development applications subject to notification requirements including all open and closed record appeals shall be given as follows:
1. For applications where an open record hearing is required, the notice of public hearing will be sent to the applicant, owner, those property owners within the notification distances noted in subsection (A)(3) of this section, and all parties of record.
2. For Type IV and VI applications a notice of public hearing will be distributed for the open record hearing as outlined above; however, only the applicant, owner, and parties of record will receive an individual notice advising them of the date/time of the city council hearing where the final decision will be made.
3. Timing. Except as otherwise required, public notification of meetings, hearings, and pending actions shall be made by:
a. Publication at least 14 days before the date of a public meeting, hearing, or pending action in the newspaper of record, if one has been designated, or a newspaper of general circulation in the city; and
b. Mailing at least 14 days before the date of a public meeting, hearing, or pending action to all parties of record, the project proponent, and affected government agencies.
c. The day of the hearing can be counted as one of the required 14 days.
d. For Type IV and VI applications the notice of the city council hearing is not required to be published or posted on the subject site.
4. Content of Notice. The public notice shall include a general description of the proposed project, the action to be taken, a nonlegal description of the property, the time, date and place of the public hearing, and where further information may be obtained.
D. Notice of Final Plat. For Type V final plat approvals a notice will be distributed to the applicant, owner, and parties of record no less than five days prior to the city council meeting informing them that the city council will be taking action on the final plat at a closed record meeting where testimony will not be taken.
E. Notice of Examiner or Commission Decision. Notice of hearing examiner and planning commission decisions shall be made to all parties of record, the project proponent, and affected government agencies. Notification shall be made by mail and must include:
1. A description of the decision(s), including any conditional approval;
2. A statement explaining where further information may be obtained;
3. The decision date and a statement that the decision will be final unless an appeal to the city council is filed with the CEDD within 14 days of the date of the decision.

F. Notice of Council Decision. Notice of city council decisions subject to notice requirements shall be made to all parties of record, the project proponent, and affected government agencies. Notification shall be made by mail and must include:
1. A description of the decision(s), including any conditions of approval;
2. A statement explaining where further information may be obtained;
3. The decision date and a statement that the decision will be final unless the appropriate land use appeal, writ of review or appeal from the decision of the city council is filed.
G. Notice of Appeal. Notice of appeals subject to notice requirements shall be made to all parties of record, the project proponent, and affected government agencies. Notification shall be made by mail and must include:
1. A description of the decision(s) being appealed;
2. A statement explaining where further information may be obtained; and
3. A statement of when and where the appeal will be heard.
H. Failure to Receive Notice. Failure to receive such mailed notification, or posting of the land use notice board, as may be required in subsections A to G of this section shall have no effect upon the proposed action or application. (Ord. 3560 § 3, 2012).

SECTION FIFTY-FIVE. Section 14.05.210(B), of the Mount Vernon Municipal Code is hereby repealed and reenacted with the new section to read as follows:

SECTION FIFTY-SIX. Exhibit A, referenced within Mount Vernon Municipal Code 14.15.010, Established, shall include a new fees as follows:

Applications using Chapter 17.73 MVMC shall pay the following fee that is in addition to all other applicable fees:

- $1,000.00 plus $50.00 per dwelling unit being created (this is a one-time fee paid when land use permits are applied for)
- 100% of Consultant Cost
- Monitoring Fees. Housing Owner shall pay to the City an annual monitoring fee, due on January 1st of each year, intended to cover the cost of City staff time to receive, review, document, and record compliance of each affordable housing unit with the terms of this Covenant and Agreement. The City estimates the cost to complete the described monitoring tasks will be $75.00 for each Restricted Unit in 2019. Should City staff time needed to complete the required yearly monitoring tasks be less than $75.00 per Restricted Unit the City will assess a reduced fee that covers only the required City staff time. Every year starting in 2020 the $75.00 Restricted Unit monitoring fee shall be adjusted every year on January 1st to account for inflation. The Consumer Price Index (CPI) published by the Bureau of Labor Statistics that is part of the United States Department of Labor shall be used to account for inflation to increase or decrease the monitoring fees assessed by the City over time.

Applications using Chapter 16.34 MVMC shall pay the following fee that is in addition to all other applicable fees:

- $1,000.00 plus $50.00 per dwelling unit being created (this is a one-time fee paid when land use permits are applied for)
- 100% of Consultant Cost

SECTION FIFTY-SEVEN. SEVERABILITY. Should any section, paragraph, sentence, clause or phrase of this Ordinance, or its application to any person or circumstance, be declared unconstitutional or otherwise invalid for any reason, or should any portion of this Ordinance be pre-empted by state or federal law or regulation, such decision or pre-emption shall not affect the validity of the remaining portions of this Ordinance or its application to other persons or circumstances.

SECTION FIFTY-EIGHT. SAVINGS CLAUSE. All previous ordinances which may be repealed in part or their entirety by this ordinance, shall remain in full force and effect until the effective date of this ordinance.

SECTION FIFTY-NINE. This ordinance shall be in full force and effect five days after its passage, approval, and publication as provided by law.

PASSED AND ADOPTED this 11th day of December, 2019.

SIGNED AND APPROVED this 12 day of December, 2019.

Doug Volesky

Doug Volesky, Finance Director

Jill Boudreau, Mayor

Approved as to form:

Kevin Rogerson, City Attorney

Published December 23, 2019

EXHIBIT A:

EXAMPLE COVENANT AND AGREEMENT FOR AFFORDABLE RENTAL HOUSING UNITS REQUIRED PER MVMC 17.73.090

After Recording Return to:
City of Mount Vernon
Development Services Department
910 Cleveland Ave.
Mount Vernon, WA 98273

Document Title:	**AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT FOR RENTED DWELLING UNITS**
Grantor(s):	(INSERT HERE)
Grantee:	City of Mount Vernon, a Municipal Corporation
Abbreviated Legal Description:	(INSERT HERE)
Full Legal Description:	Full legal description of subject property is contained in Exhibit "A"
Assessor's Tax Parcel No:	(INSERT HERE)

B. Table 14.05.210B – Land Use Permit Submittal Requirements.

SUBMITTAL REQUIREMENTS ↓ / TYPE OF APPLICATION OR PERMIT →	Accessory Dwelling Unit	Administrative Determination or Code Interpretation	Annexation (10% Petition)	Annexation (60% Petition)	Appeal	Binding Site Plan	Boundary Line Adjustment	Comprehensive Plan Map Amendment with Rezone	Comprehensive Plan Text Amendment	Conditional Use Permit, Administrative	Conditional Use Permit	Critical Area Ordinance Reasonable Use Exception, Variances and Appeals	Development Regulation Text Amendment to the MVMC	Environmental Review	Fence or Wall Permit	Historic Structure Designation or Exterior Alteration	Home Occupation I, II, or Exemption	Land Clearing Permits and Management Plans	Land Clearing Moratorium Removal	Land Clearing SFR Moratorium Exception	Landscape Modifications per MVMC 17.93.080	Latecomer Agreement	Master Plan	Major Modifications	Minor Modifications	Mobile Home Park	Nonconforming Use, Structure Expansion, or Maintenance and Repair	Plat, Final	Plat, Preliminary	PUD, Preliminary	PUD, Final	Rezone Consistent with the Comprehensive Plan	Shoreline Exemption	Shoreline Substantial Development Permit	Shoreline Conditional Use Permit	Shoreline Variance	Short Plat, Preliminary	Short Plat, Final	Site Plan Review	Special Use Permit	Street Design Modifications per Chapter 16.16 MVMC	Street Vacations	Temporary Use Permit	Transportation Concurrency Review	Variance – All Types	Waiver from MVMC 14.10.110, Chapter 16.20 or 17.70 MVMC, or MVMC 17.84.130	Wireless Facility Permit	Zoning Boundary Determination
10% Notice of Intent to Annex			X																																											
60% Petition to Annex				X																																											
Affidavits for Labels and Verifying Posting of Public Information Sign		X		X	X	X		X	X	X	X			X			X	X	X	X			X	X		X	X		X		X	X	X	X			X			X			X	
Applicant Agreement Statement																																													X	
Application Fee per Chapter 14.15 MVMC	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Application Form (Master Land Use Form)	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Assessment Information			X																																											
Assessor's Map Indicating Site/Area	X	X	X			X	X	X		X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Binding Site Plan Map						X																																							
Bonds or Securities (maintenance, monitoring or performance)						X				X	X	X														X		X			X								X						
Boundary Line Adjustment Map							X																																						
Business License																	X																													
Calculations, Survey						X	X																	X				X	X								X	X							
CC&Rs, Draft						X																		X		X			X	X							X							
CC&Rs, Final						X																		X		X		X			X							X						
Concurrency Form for Traffic			X			X				X	X			X		X	X						X	X		X	X		X	X				X	X	X	X		X	X			X	X	X	
Confirmation of Condition Compliance	X	X				X				X	X	X		X		X	X				X		X	X	X	X	X	X			X			X	X	X		X	X	X			X		X	
Construction Mitigation Description						X				X	X			X									X	X		X	X		X	X				X	X	X	X		X	X					X	
Cost Estimate for Dedicated Public Improvements						X				X	X						X						X	X		X	X	X							X	X	X		X	X	X			X		X	
Cost Estimate for Bonds						X				X	X	X		X									X	X		X	X	X							X	X	X		X	X	X			X		X	
Cost Estimate Prepared by Licensed Engineer for Proposed Improvements and Proposed Allocation of Costs																						X																									

SUBMITTAL REQUIREMENTS ↓ / TYPE OF APPLICATION OR PERMIT ↓	Accessory Dwelling Unit	Administrative Determination or Code Interpretation	Annexation (10% Petition)	Annexation (60% Petition)	Appeal	Binding Site Plan	Boundary Line Adjustment	Comprehensive Plan Map Amendment with Rezone	Comprehensive Plan Text Amendment	Conditional Use Permit, Administrative	Conditional Use Permit	Critical Area Ordinance Reasonable Use Exception, Variances and Appeals	Development Regulation Text Amendment to the MVMC	Environmental Review	Fence or Wall Permit	Historic Structure Designation or Exterior Alteration	Home Occupation I, II, or Exemption	Land Clearing Permits and Management Plans	Land Clearing Moratorium Removal	Land Clearing SFR Moratorium Exception	Landscape Modifications per MVMC 17.93.080	Latecomer Agreement	Master Plan	Major Modifications	Minor Modifications	Mobile Home Park	Nonconforming Use, Structure Expansion, or Maintenance and Repair	Plat, Final	Plat, Preliminary	PUD, Preliminary	PUD, Final	Rezone Consistent with the Comprehensive Plan	Shoreline Exemption	Shoreline Substantial Development Permit	Shoreline Conditional Use Permit	Shoreline Variance	Short Plat, Preliminary	Short Plat, Final	Site Plan Review	Special Use Permit	Street Design Modifications per Chapter 16.16 MVMC	Street Vacations	Temporary Use Permit	Transportation Concurrency Review	Variance – All Types	Waiver from MVMC 14.10.110, Chapter 16.20 or 17.70 MVMC, or MVMC 17.84.130	Wireless Facility Permit	Zoning Boundary Determination
Density Worksheet						X				X	X			X									X	X	X	X			X	X					X		X	X						X			
Design Standards Plans	X	X				X				X	X												X	X			X	X	X	X					X	X	X									
Draft and Final Deeds for Proposed Dedication of Land for Public Purposes						X																					X										X										
Drainage Plan	X					X				X	X	X		X				X	X	X			X	X		X	X						X	X	X	X				X		X			X	
Drainage Report	X					X				X	X	X		X				X	X	X			X	X		X	X						X	X	X	X				X		X			X	
Elevations, Architectural	X									X	X					X	X						X	X		X	X	X	X				X	X	X	X	X			X		X			X	
Elevations, Grading						X				X	X	X		X							X		X	X		X	X						X	X	X	X	X			X		X			X	
Environmental Checklist						X		X	X	X	X	X	X	X				X	X	X			X	X		X			X	X		X		X	X	X	X				X					
Existing Covenants (recorded copy)	X		X			X	X	X		X	X	X		X		X		X	X	X			X	X		X	X		X	X		X		X	X	X	X				X		X			X	
Existing Easements (recorded copy)	X		X			X	X	X		X	X	X		X	X	X		X	X	X			X	X		X	X		X	X		X		X	X	X	X		X		X		X			X	
Final Plat Map																											X										X										
Flood Hazard Data and/or Flood Zone Location	X		X			X		X		X	X	X		X		X							X	X		X	X		X	X		X	X	X	X	X	X			X		X		X			X	
Floor Plans	X									X	X	X				X	X						X	X		X	X	X	X	X	X			X	X	X	X	X	X			X		X				
Geotechnical Report	X					X				X	X	X		X		X	X	X	X	X			X	X		X	X		X	X			X	X	X	X	X				X		X			X	
Grading Plan, Final	X					X				X	X	X		X		X	X	X	X	X			X	X		X	X						X	X	X	X				X		X			X	
Grading Plan, Preliminary	X					X				X	X	X		X		X	X	X	X	X			X	X		X	X		X	X			X	X	X	X	X				X		X			X	
Habitat/Wildlife Assessment	X					X				X	X	X		X	X	X	X	X	X	X			X	X		X	X		X	X			X	X	X	X	X				X		X			X	
Hydrogeologic Study	X					X				X	X	X		X	X	X	X	X	X	X			X	X		X	X		X	X			X	X	X	X	X				X		X			X	
Inventory of Existing Sites/Service Area																																																X	
Justification for Proposal		X	X			X		X	X	X	X	X	X	X		X	X	X	X	X	X		X	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Landscape Plan, Conceptual	X					X				X	X			X		X	X				X		X	X		X	X		X	X				X	X	X	X				X		X	X	X	X	
Landscape Plan, Detailed	X					X				X	X			X		X	X				X		X	X		X	X	X			X		X	X	X		X	X				X		X	X	X	X	
Landscape Worksheet	X					X				X	X			X		X	X				X		X	X		X	X	X	X	X	X			X	X	X	X					X		X	X	X	X	
Lease Agreement, Draft																																															X	
Legal Description	X					X	X	X		X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X

SUBMITTAL REQUIREMENTS ↓ / TYPE OF APPLICATION OR PERMIT ↓	Accessory Dwelling Unit	Administrative Determination or Code Interpretation	Annexation (10% Petition)	Annexation (60% Petition)	Appeal	Binding Site Plan	Boundary Line Adjustment	Comprehensive Plan Map Amendment with Rezone	Comprehensive Plan Text Amendment	Conditional Use Permit, Administrative	Conditional Use Permit	Critical Area Ordinance Reasonable Use Exception, Variances and Appeals	Development Regulation Text Amendment to the MVMC	Environmental Review	Fence or Wall Permit	Historic Structure Designation or Exterior Alteration	Home Occupation I, II, or Exemption	Land Clearing Permits and Management Plans	Land Clearing Moratorium Removal	Land Clearing SFR Moratorium Exception	Landscape Modifications per MVMC 17.93.080	Latecomer Agreement	Master Plan	Major Modifications	Minor Modifications	Mobile Home Park	Nonconforming Use, Structure Expansion, or Maintenance and Repair	Plat, Final	Plat, Preliminary	PUD, Preliminary	PUD, Final	Rezone Consistent with the Comprehensive Plan	Shoreline Exemption	Shoreline Substantial Development Permit	Shoreline Conditional Use Permit	Shoreline Variance	Short Plat, Preliminary	Short Plat, Final	Site Plan Review	Special Use Permit	Street Design Modifications per Chapter 16.16 MVMC	Street Vacations	Temporary Use Permit	Transportation Concurrency Review	Variance – All Types	Waiver from MVMC 14.10.110, Chapter 16.20 or 17.70 MVMC, or MVMC 17.84.130	Wireless Facility Permit	Zoning Boundary Determination
Legal Description for Annexation			X																																											
Legal Description, Electronic Copy in MS Word Format	X		X			X	X	X		X	X	X		X	X	X	X				X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X			X		X			
Letter to Examiner/ Council Stating Reason(s) for Appeal					X																																									
List of Affected Property Owners within Annexation or Assessment Reimbursement Area Boundary			X																			X																								
List of Site and Surrounding Property Owners and Mailing Labels for Same			X	X	X	X		X		X	X	X		X		X	X	X	X	X			X	X		X	X		X	X		X		X	X	X	X			X	X	X			
Map of Existing Site Conditions	X		X			X	X	X		X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		X	X	X	X	X	X			X	X	X	X		
Map of Proposed Assessment Reimbursement Area and Location of Proposed Improvements																						X																								
Map of View Area																																														X	
Master Plan																							X																								
Mobile Home Park Map																										X																				
Monument Card (one per monument)						X																					X											X								
Neighborhood Detail Map		X	X			X	X	X		X	X	X		X		X	X	X	X	X		X	X	X		X	X		X	X		X		X	X	X	X	X			X	X	X	X	X	X
Nonconformity Relationship and Compatibility Narrative																											X																			
Parking Worksheet						X				X	X			X		X	X						X	X			X		X	X		X		X	X	X	X			X	X	X	X		
Photo Simulations																																													X	
Plan Reductions	X		X	X		X	X	X		X	X	X		X	X	X	X				X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Pond Performance Report and Maintenance Schedule						X				X	X												X	X		X	X	X			X			X	X	X		X	X	X			X		X		X	
Pre-Application Meeting Summary			X			X		X	X	X	X	X		X		X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X
Preliminary Plat Map																												X																			
Project Narrative	X	X	X	X		X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X		X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	
Public Works Approval Letter										X	X	X		X		X	X						X	X	X	X	X	X				X	X	X	X	X		X	X	X			X		X	X	X	

SUBMITTAL REQUIREMENTS ↓ / TYPE OF APPLICATION OR PERMIT ↓	Accessory Dwelling Unit	Administrative Determination or Code Interpretation	Annexation (10% Petition)	Annexation (60% Petition)	Appeal	Binding Site Plan	Boundary Line Adjustment	Comprehensive Plan Map Amendment with Rezone	Comprehensive Plan Text Amendment	Conditional Use Permit, Administrative	Conditional Use Permit	Critical Area Ordinance Reasonable Use Exception, Variances and Appeals	Development Regulation Text Amendment to the MVMC	Environmental Review	Fence or Wall Permit	Historic Structure Designation or Exterior Alteration	Home Occupation I, II, or Exemption	Land Clearing Permits and Management Plans	Land Clearing Moratorium Removal	Land Clearing SFR Moratorium Exception	Landscape Modifications per MVMC 17.93.080	Latecomer Agreement	Master Plan	Major Modifications	Minor Modifications	Mobile Home Park	Nonconforming Use, Structure Expansion, or Maintenance and Repair	Plat, Final	Plat, Preliminary	PUD, Preliminary	PUD, Final	Rezone Consistent with the Comprehensive Plan	Shoreline Exemption	Shoreline Substantial Development Permit	Shoreline Conditional Use Permit	Shoreline Variance	Short Plat, Preliminary	Short Plat, Final	Site Plan Review	Special Use Permit	Street Design Modifications per Chapter 16.16 MVMC	Street Vacations	Temporary Use Permit	Transportation Concurrency Review	Variance – All Types	Waiver from MVMC 14.10.110, Chapter 16.20 or 17.70 MVMC, or MVMC 17.84.130	Wireless Facility Permit	Zoning Boundary Determination
PUD, Preliminary Plan																														X																		
PUD, Final Plan																															X																	
Record Drawings or As-Builts						X				X	X	X				X	X						X	X		X	X	X		X				X	X	X				X		X		X		
Reforestation Plans and Other Materials to Comply with RCW 76.09.060 (3)																		X	X	X																													
Roadway Construction Plans						X				X	X			X									X	X	X	X	X		X	X				X	X	X	X			X		X		X		
Screening Detail, Refuse/Recycling						X				X	X			X		X	X						X	X	X	X	X	X	X	X	X			X	X	X	X			X		X	X	X		
Short Plat Map, Preliminary																																						X										
Short Plat Map, Final																																							X									
Site Plan	X		X			X	X			X	X	X		X	X	X	X	X	X	X	X		X	X	X	X	X					X	X	X	X			X	X		X	X	X	X	X	X
Stream Study, Standard (1)	X		X			X				X	X	X		X		X	X	X	X	X			X	X	X	X	X		X	X		X	X	X	X	X		X	X			X		X		
Street Lighting Plan					X					X	X												X	X		X			X	X			X	X	X	X			X	X			X			
Street Plan and Profile						X	X			X	X											X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X	X	X	X	X			
Survey	X					X	X			X	X	X			X	X	X	X	X	X			X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X		X		X		X	X
Title Report or Plat Certificate	X		X			X	X	X		X	X	X		X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X		X	X		X	X	X	X
Topography Map	X		X			X	X			X	X	X		X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X			X		X	X	X	
Tree Cutting/Land Clearing Plan	X					X				X	X	X		X		X	X	X	X	X	X		X	X	X	X	X		X	X			X	X	X	X			X	X			X		X		
Utilities Construction Plans						X				X	X			X									X	X	X	X	X		X	X			X	X	X	X			X	X	X		X		
Utilities Plan and Profile						X	X			X	X												X	X	X	X	X	X	X	X	X			X	X	X	X	X	X	X	X		X		X		
Wetland Assessment (2)	X		X			X				X	X	X		X		X	X	X	X	X		X	X	X	X	X	X		X	X			X	X	X	X			X	X		X		X		

(1) A Supplemental Stream Study and Stream Mitigation Plan may need to be submitted by an applicant following the submittal and review of the Standard Stream Study. The CEDD director shall determine if one or both of these additional reports will be necessary.

(2) Preliminary and Final Wetland Mitigation Plans may need to be submitted by an applicant following the submittal and review of the Wetland Assessment. The CEDD director shall determine if these reports will be necessary.

(3) Any other additional information that the director deems necessary to comply with RCW 76.09.060 shall be provided by the applicant.

(Ord. 3776 § 7, 2019)

AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT FOR RENTED DWELLING UNITS

THIS AFFORDABLE HOUSING RESTRICTIVE COVENANT AND AGREEMENT ("Covenant and Agreement") is entered into as of the (INSERT DAY) day of (INSERT MONTH), (INSERT YEAR), by and between (INSERT GRANTOR'S NAME), a (FILL IN FORM OF CORPORATION AS APPLICABLE) (THE "HOUSING OWNER"), and **THE CITY OF MOUNT VERNON**, a political subdivision of the State of Washington (the "City"). The City and Housing Owner are individually referred to as "Party" and collectively referred to as the "Parties".

I. RECITALS

Chapter 17.73 of the Mount Vernon Municipal Code (MVMC) permits additional dwelling units and allows deviations to a variety of development regulations in exchange for the creation of dwelling units rented to low income households; and

This Covenant and Agreement applies to certain real property identified as Skagit County Assessor Parcel Number(s): (FILL IN), addressed as: (FILL IN), located in the City of Mount Vernon, Skagit County, WA, which is fully described in the legal description in **Exhibit A** attached and incorporated herein by this reference ("Subject Property"); and

The Housing Owner proposes to develop the Subject Property with (# of SFR units) and/or (# of MF units) and/or (other description – as applicable) permitted under the Development Services Department Project number (FILL IN PROJECT #) (the "Project," which term shall include any modified development of the Property under the identified permit number); and

As a condition of the Project, the City has required the Housing Owner to construct (INSERT #) low income housing units, which are more particularly described in **Exhibit B** attached and incorporated herein by this reference ("Restricted Units"); and

It is the intent of the Parties that the Restricted Units be rented in accordance with this Covenant and Agreement and any affordable housing program which may be adopted and implemented by the City at any time to ensure that the Restricted Units remain rented to low income households for the term of this Covenant and Agreement; and

The purpose of this Covenant and Agreement is to ensure that the Restricted Units remain affordable for low income households for the term of this Covenant; and

NOW THEREFORE, in consideration of foregoing and the mutual promises herein, the Housing Owner agrees as follows for the benefit of the City, and hereby grants and conveys to the City and imposes on the Property the covenants and restrictions set forth below.

II. DEFINITIONS

Definitions. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the terms defined above shall have the meanings set forth above, and the following terms shall have the respective meanings set forth below for the purposes hereof:

A. "Area Median Income" or "AMI" means an income estimate developed with U.S. Census data and an inflation factor based on the Congressional Budget Office (CBO) forecast of the national Consumer Price Index (CPI). The U.S. Department of Housing and Urban Development (HUD) calculates and releases this data on a yearly basis.

B. "Director" means the Director of the City's Development Services Department or his or her designee.

C. "Eligible Renter" means a Low Income Household that receives a Certificate of Eligibility certifying that the potential renter complies with the conditions of this Covenant and Agreement.

D. "Family" means Family as defined in 24 CFR Section 5.403 or successor provision. Family includes an individual person.

XX. "Housing Owner" means the above identified entity holding title to the Subject Property at the time of Covenant and Agreement execution and all successors in interest.

E. "Intent to Reside Statement" means a statement in the Application for Eligibility stating that the potential renter intends to occupy the Restricted Unit in compliance with the Owner occupancy requirement upon becoming the Renter of the Restricted Unit.

F. "Low Income Household" means a household whose annual income does not exceed eighty percent of the Mount Vernon-Anacortes Metropolitan Statistical Area (MSA) median household income, adjusted for household size, as determined by HUD, with no more than 30 percent of the monthly household income being paid for monthly housing expenses (rent and utility allowance).

G. "Low-Income Housing" means housing rented and occupied by a Low Income Household.

H. "Maximum Rental Price" means the rental price for a dwelling unit that is not in excess of the maximum monthly rental price calculated as being no more than 30 percent of the monthly household income paid for monthly housing expenses (rent and utility allowance) for households whose annual median income does not exceed eighty percent of the AMI. **Appendix C** contains worksheets outlining how the maximum rental price shall be established for Restricted Units.

I. "Median Income" means annual median Family income for the Mount Vernon-Anacortes, WA MSA, as published by HUD, with adjustment to be made according to a household size in a manner determined by the Director, which adjustments shall be based upon a method used by HUD to adjust income limits for subsidized housing, and which adjustments for purposes of determining affordability of rents shall be based on the average size of household considered to correspond to the size of the housing unit.

J. "Perpetual" means never ceasing and unlimited with respect to time. This Covenant and Agreement shall be in effect for the life of the Project for which either the restricted units and/or

the bonus density units are used as dwelling units.

K. "Principal Place of Residence" means the place where a person or persons reside on a full-time basis for a minimum of ten (10) months out of each twelve (12) month period.

L. "Rent" shall include all amounts paid directly or indirectly for the use or occupancy of a Designated Unit and of common areas of the Housing Development.

M. "Restricted Units" means the dwelling units eligible, low income, renters live in.

N. "Unit" means a dwelling unit in the Project.

O. "Utility Allowance" means an allowance approved by the City for basic utilities such as water, sewer, electricity, and gas payable by the renter, which unless otherwise approved in writing by the City, shall be equal to the utility allowance published from time to time by the Skagit County Housing Authority for the type of Unit, or, if the City determines that no reasonably comparable figures are available from the Skagit County Housing Authority, the utility allowance shall be such an amount as the City determines is an adequate allowance for basic utilities, to the extent that such items are not paid by the Housing Owner. The Utility Allowance shall not include telephone, internet/wireless, or cable TV services.

III. TERM AND TRANSFERS

A. Term of Covenant and Agreement. This Covenant and Agreement is binding upon and enforceable against the Housing Owner for the life of the Project, for the benefit of and enforceable by the City. If the Project, as a whole, is destroyed or demolished, and the Housing Owner rebuilds not under the codes the Project was permitted under, but the City Codes then in effect, absent further amendment, this Covenant and Agreement will terminate.

B. Covenant and Agreement to Run with the Restricted Units. Each Restricted unit is held (and shall be held), transferred, and occupied subject to the covenants, conditions, restrictions and limitations in this Covenant and Agreement. This Covenant and Agreement is intended to constitute both an equitable servitude, covenant, and agreement running with the Subject Property.

C. Housing Owner hereby grants to the City, and subjects the Property to, the conditions, covenants, and restrictions set forth herein, which are covenants running with the land, binding on Housing Owner and its successors and assigns, benefiting the City.

D. Housing Owner hereby declares its express intent that this Covenant and Agreement shall pass to and be binding upon the Housing Owner's successors in title including any purchaser, grantee, owner or lessee of any portion of the Property (other than residential renters of individual units) and of any purchaser, grantee, owner or lessee of any portion of the Property and any other person or entity having any right, title or interest therein.

E. Housing Owner agrees not to transfer the Property or any portion thereof or interest therein (other than residential tenancies in the Project consistent with this Agreement) to any successor unless the successor agrees in writing to be bound by the provisions of this Covenant and Agreement and Housing Owner provides the Director with a copy of such agreement prior to the transfer.

F. Transfers of membership interests or changes of members in an entity whose members do not have an interest in specific property of the entity, pursuant to RCW 25.15.245 or other applicable laws, are not considered to be transfers of an interest in the Property or Project for purposes of this Agreement.

IV. OWNER OBLIGATIONS, AUTHORIZATIONS & RENTAL REQUIREMENTS

A. Income Requirements. All Restricted Units identified in Exhibit A shall be used as housing solely for Low-Income Households, based on the Household Annual Income.

B. For the purpose of this Agreement, Household Annual Income means the aggregate annual income of all persons over eighteen (18) years of age residing within the same household for a period of at least one month and shall be calculated for prospective tenants by projecting the income anticipated to be received over the twelve-month period following the date of initial occupancy, based on the prevailing rate of income of each person at the time of income verification, which shall be no more than six (6) months prior to the date of initial occupancy.

C. Maximum Monthly Rent. The monthly Rent for each of the Designated Units, together with a Utility Allowance, shall not exceed one-twelfth (1/12) of thirty (30) percent of eighty (80) percent of Annual Median Income. There shall be no additional charges imposed by the Housing Owner for occupancy of Designated Units other than Rent.

D. Maintenance. The Restricted Units and the structure in which they are located shall be maintained in decent and habitable condition, including the provision of adequate basic appliances, for the duration of this Agreement.

E. Initial and Annual Income Certifications. Housing Owner shall obtain from each new tenant in a Restricted Unit a certification of Family size and income in form acceptable to the City. Housing Owner shall also so examine the income and Family size of any tenant Family at any time when the Housing Owner receives notice that the tenant's certification of Family size and/or income was not complete or accurate. Housing Owner shall obtain such certifications and/or examine incomes and Family sizes no less frequently than annually. Housing Owner shall maintain all certifications and documentation obtained under this subsection on file for at least five (5) years after such certifications and documentation are obtained, and Housing Owner shall make the certifications and documentation available to the City for inspection and copying promptly upon request.

F. Reporting. For so long as this Agreement remains in effect, the Housing Owner shall submit to the City, by January 1 of the following year, or at other such times as may be authorized by the Director, a written report stating the monthly Rents charged for each Restricted Unit during the prior calendar year and the income and Family size of each Designated Unit, as of their respective beginning of occupancy. The Director may require documentation of Rents, copies of tenant certifications, and documentation supporting

determinations of tenant income (e.g., employer's verification or check stubs).

G. Subleases/Assignments. Tenants renting Designated Units shall not be permitted to sublease or otherwise assign their Designated Units.

H. Lease Agreement and Information to Tenants. Housing Owner shall prepare a lease or rental agreement (hereafter known as the "Lease") for all tenants who occupy Restricted Units in accordance with the requirements contained in this Agreement. The Lease shall: (1) specify the maximum monthly Rent that may be charged for the Restricted Unit; (2) state that information regarding the housing bonus program may be obtained from the City; and (3) in all other respects comply with the requirements contained in this Agreement. To the extent that other agreements or restrictions on the Property or Project require Rents lower than those permitted hereunder, the Lease shall state the maximum monthly Rent under those agreements or restrictions in lieu of the maximum monthly Rents allowed by this Agreement.

I. Insurance; Loss or Damage to Designated Units; Condemnation. Housing Owner shall keep the Project insured by an insurance company licensed to do business in the state of Washington and reasonably acceptable to the City, against loss by fire and other hazards included with "broad form coverage," in the amount of one hundred (100) percent of the replacement value of the Project for the entire term of this Agreement, unless otherwise agreed to in writing by the City and Housing Owner. Housing Owner shall provide to the City evidence satisfactory to the City of compliance with this insurance requirement promptly upon request of the City. If any Designated Unit is destroyed or rendered unfit for occupancy by casualty or otherwise and is not replaced or restored within 30 days thereafter, the Housing Owner shall substitute another unit in the Project of at least equal size and number of bedrooms for that Restricted Unit, as soon as such a unit becomes vacant. If the Project is substantially destroyed, any new development on the Property shall include new Restricted Units satisfying the terms of this Agreement, and Housing Owner shall designate by notice to the City new Restricted Units, at least equal in number, size and numbers of bedrooms as the original Restricted Units, no later than the date a certificate of occupancy is issued for the new units. Should the Project be entirely demolished, and the site rebuilt under the codes then in effect, *see* III(A) addressing Covenant and Agreement term.

J. Segregation of Ownership. Housing Owner, its successors or assigns, may segregate ownership of any portion of the Project in any manner permitted by law, provided that such segregation does not restrict Housing Owner's ability to comply with this Agreement.

K. Other Agreements. If a lower Rent or income eligibility limit, or both, than that permitted within this Agreement, is required by any other agreement applicable to any of the Restricted Units, then that lower Rent requirement of income eligibility limit, or both as applicable, shall apply to the Restricted Units.

L. Monitoring Fees. Housing Owner shall pay to the City an annual monitoring fee, due on January 1st of each year, intended to cover the cost of City staff time to receive, review, document, and record compliance of each affordable housing unit with the terms of this Covenant and Agreement. The City estimates the cost to complete the described

monitoring tasks will be $75.00 for each Restricted Unit in 2019. Should the City staff time needed to complete the required yearly monitoring tasks be less than $75.00 per Restricted Unit the City will assess a reduced fee that covers only the required City staff time. Every year starting in 2021 the $75.00 Restricted Unit monitoring fee shall be adjusted on January 1st to account for inflation. To the extent consistent with changes in actual monitoring costs to the City, the Consumer Price Index (CPI) published by the Bureau of Labor Statistics that is part of the United States Department of Labor shall be used to account for inflation to increase or decrease the monitoring fees assessed by the City over time.

M. Inspection of the Restricted Units, Access License. Housing Owner hereby grants to the City a license, subject to existing laws, rules, regulations, matters of record, and the rights of residential tenants in occupancy, to enter the Project during normal business hours (upon not less than seventy-two (72) hours' prior notice to Housing Owner) in order to inspect the Project and to inspect such records as are necessary to determine compliance with this Agreement, and to exercise any other rights or remedies that the City may have hereunder.

V. ENFORCEMENT, DEFAULT AND REMEDIES

A. Notice of Default or Violation. In the event of any default under or violation of this Covenant and Agreement, City shall provide the Owner thirty (30) days written notice of such default, which notice shall state the nature of the default or violation. If the default or violation is not cured to the satisfaction of City within thirty (30) days from receipt of such notice, City may pursue any or all remedies available to it as set forth in this Section.

B. Providing False or Misleading Information. All Owners shall be held liable for the accuracy of all information and documentation provided in and/or in connection with the Application for Eligibility and any audits. If it is determined that false or misleading information was supplied to City, the Rental of the Restricted Unit shall be wholly null and void and City may pursue any or all remedies available to it as set forth in this Section.

C. City Enforcement. City hereby reserves the right to enforce this Covenant and Agreement by pursuing any and all remedies provided by law or in equity. City's remedies shall include, by way of example and not limitation, the right to specific performance of this Covenant and Agreement, the right to a mandatory injunction requiring the rent of a Restricted Unit in conformance with this Covenant, the disgorgement of profits received from any Transfer conducted in violation of this Covenant and Agreement, and damages and injunctive relieve for breach of this Covenant and Agreement.

D. Excess Rents. If Rent for any Designated Unit is charged in excess of the limits in this Agreement, the Housing Owner agrees to make refund of those Rents charged in excess, with interest at twelve (12) percent per annum, to those tenants overcharged. Such refund shall be made promptly upon receiving notice of the overcharge from the City.

E. Other Violations. In the event of any other violation by Housing Owner of any of the provisions of this Agreement, the City may notify Housing Owner in writing of the violation. Housing Owner

shall have thirty (30) days from the date of receipt of such notice to cure such violation. Failure by the Housing Owner to cure within thirty (30) days shall constitute default by Housing Owner under this Agreement. Notwithstanding the foregoing in this subsection, if the violation is of such a nature that it may not be practicably cured within thirty (30) days by Housing Owner, the City may not be entitled to exercise its remedies under this Agreement so long as Housing Owner commences cure of such violation within the thirty (30) day period and diligently pursues the cure to completion.

F. Remedies. If Housing Owner is found to be in default of this Agreement, the City's remedies shall include, without limitation, specific performance, preliminary and permanent injunctive relief, appointment of a receiver on an interim and/or permanent basis, monetary damages, restitution, and recovery of all costs and attorneys' fees incurred by the City in enforcing this Agreement, including the reasonable value of services provided by attorneys who are City employees and including the reasonable value of any other services provided by City employees.

G. No Waiver. No waiver of any breach or violation of this Agreement shall be binding unless made in writing by the City and no waiver or delay in enforcing the provisions of this Agreement as to any breach or violation shall impair, damage, or waive the right of the City to obtain relief or recover for the continuation or repetition of such breach or violation or any similar breach or violation of the Agreement at any later time.

H. Nothing herein limits the authority of the City to take enforcement action under the Code.

VI. OTHER TEMS, CONDITIONS AND REQUIREMENTS

A. Priority. Housing Owner represents and warrants that there are no monetary liens on the Property or Project with priority over this Agreement.

B. Representations and Warranties, and No Conflict with other Documents. Housing Owner represents and warrants that it has the full power and authority to enter into and perform this Agreement, that this Agreement represents the valid, binding obligation of Housing Owner and is enforceable in accordance with its terms, and that Housing Owner has not executed and will not execute any other agreement with provisions contradictory to, or in opposition to the provisions of this Agreement.

C. Attorneys' Fees. If legal action is commenced involving enforcement of this Agreement against the Housing Owner reasonable attorneys' fees and costs shall be awarded to the substantially prevailing party.

D. Choice of Law, Jurisdiction, and Venue. This Agreement shall be construed and enforced in accordance with and governed by the laws of the state of Washington. Housing Owner and the City consent to the jurisdiction of the courts of the state of Washington and agree that venue of any action arising hereunder shall be exclusively in Skagit County, Washington.

E. Captions. The section and subsection captions used in this Agreement are for convenience only and shall not control or affect the meaning or construction of any of the provisions in this Agreement.

F. Genders. The use of any gender herein shall be deemed to include the other gender, and the use of the singular in this Agreement shall be deemed to include the plural and vice versa, wherever appropriate.

G. Counterparts, Effectiveness, Recordation, Amendments. This Agreement may be executed in two or more counterparts, each of which shall constitute an original. This Agreement shall be effective upon recording. The provisions hereof shall not be amended, revised or terminated, other than pursuant to the express terms hereof, except by an instrument in writing duly executed by the Director and Housing Owner or their successors and assigns, and duly recorded.

H. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

I. Entire Agreement. This Agreement, including any exhibits, attachments and references to documents herein, contains the entire agreement and understanding between Housing Owner and the City with respect to the subject matter of this Agreement.

J. Delivery of Notice. Any notice or other document required or permitted by this Agreement to be delivered to a party shall be deemed delivered on the day personally delivered, or shall be deemed delivered three (3) days after mailing. If the delivery day after mailing falls on a Saturday, Sunday, or City of Seattle holiday, or if personal delivery is made after normal working hours, then the delivery day shall be determined to be the next day that is not a Saturday, Sunday, or City of Seattle holiday.

Delivery to the City shall be made to:

City of Mount Vernon
Attention: City Attorney
910 Cleveland Ave
Mount Vernon, WA 98273

Or to such other address/department as is later specified to the City by written notice to the Housing Owner.

Delivery to Housing Owner shall be made to:

FILL IN c/o Contact name
Contact title Company
name Address
City, State Zip

Or to other such address as is later specified by Housing Owner by written notice to the City.

SIGNED AND APPROVED this Click here to enter text. day of Click here to enter text., 20Click here to enter text.

OWNER

Signature of Property Owner

OWNER

Signature of Property Owner

CITY OF MOUNT VERNON

Mayor

(insert Mayor's name)

Signature of Development Services Director or Designee

Approved as to form:

City Attorney

Exhibit A: Legal Description
Exhibit B: Project Units, including Designated Units, by Unit Type and Floor Area
Exhibit C: Maximum Rental Calculations

STATE OF WASHINGTON }
ss.
COUNTY OF SKAGIT }

I certify that I know or have satisfactory evidence that Click here to enter text. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Click here to enter text.to be the free and voluntary act and deed of said Click here to enter text., for the uses and purposes therein mentioned.

Given under my hand and official seal this Click here to enter text. day Click here to enter text.of, 20Click here to enter text..

(SEAL)

_____
Notary Public
Residing at_____
My appointment expires _____

STATE OF WASHINGTON }
ss.
COUNTY OF SKAGIT }

I certify that I know or have satisfactory evidence that Click here to enter text. is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Click here to enter text.to be the free and voluntary act and deed of said Click here to enter text., for the uses and purposes therein mentioned.

Given under my hand and official seal this Click here to enter text. day Click here to enter text.of, 20Click here to enter text..

(SEAL)

_____
Notary Public
Residing at_____
My appointment expires _____

EXHIBIT A
LEGAL DESCRIPTION

FILL IN full legal description (not abbreviated)

EXHIBIT B
PROJECT DESCRIPTION

PROJECT NAME: _____

PROJECT FILE #: _____

SITE ADDRESS: _____

SITE PARCEL NUMBER(S): _____

Street Address/Building Designation	Unit No.	No. of Bedrooms	No. of Baths	Approved Rent

EXHIBIT C
MAXIMUM RENTAL CALCULATIONS

The formula for calculating Income-Based Rent is set by the U.S. Department of Housing and Urban Development ("HUD"), and is equal to 30% of the household's "adjusted monthly income" less a utility allowance that is described in detail in this Exhibit. The City follows the rules, regulations, and procedures that HUD has adopted to calculate maximum rental calculations that are currently found in Chapter 5 of the HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs. A copy of Chapter 5 is attached to this Exhibit.

At such time the above-referenced HUD Handbook is updated or changed the City shall use the updated and/or changed version. Additionally, the Development Services Director has the authority to promulgate rules and procedures to calculate maximum rents.

STEP 1: DETERMINE INCOME ELIGIBILITY.

A. Calculate Annual Income. The total income of the household (Annual Gross Income) is from all sources anticipated to be received in the 12-month period following the effective date of the income certification. This means income must be annualized, i.e. payment amounts multiplied by the number of payment period per year for all income sources.
B. Determine Allowed Deductions and Exclusions from the Annual Income. Deductions and exclusions from annual income need to be made as per HUD regulations 24 CFR 5.611(a) as it is currently written and as it may be amended in the future.
C. Calculate the Adjusted Income (Annual Income less Allowable Deductions = Adjusted Income). The adjusted income is required to be 80% or less of the Mount Vernon-Anacortes MSA median household income, adjusted for household size, as determined by HUD, to be able to rent the restricted dwelling units identified in this Covenant and Agreement.

   Following is the Income Limits Information from FY 2019 that is obtained from HUD. This same data is required to be generated using the fiscal year within which the initial eligibility is determined and must be updated for the required yearly income verifications.

INCOME LIMITS	
Family Size	**Income Limits to be Eligible to Live in Affordable Housing Units**
1	$42,600
2	$48,650
3	$54,750
4	$60,800
5	$65,700
6	$70,550
7	$75,400
8	$80,300

STEP 2: CALCULATE THE YEARLY RENT AND UTILITY PAYMENTS REQUIRED

A. Take the Adjusted Income calculated in Step 1 (above) and multiply it by 30%.
B. Calculate the monthly utility allowance and multiply it by 12 for a yearly utility allowance. The monthly utility allowance can be determine in one of two ways:
    a. If the Skagit County Housing Authority has an accurate utility allowance it can used.
    b. Alternatively, the City can create estimates of the typical cost of utilities and services paid by energy-conservative households that occupy housing of similar size and utility responsibility in Mount Vernon. These estimates are not intended to be based on an individual families actual energy consumption and do not include non-essential utility costs such as telephone or cable.
C. Subtract the yearly utility allowance from the Adjusted Yearly Income calculated under Step 2(A).

STEP 3: DETERMINE THE MONTHLY HOUSING PAYMENT

A. Take the Yearly Rent Minus the Yearly Utility Payments calculated under Step 2(C) and divide this number by 12 to calculate the maximum monthly housing payment.
B. Should the monthly housing payment be more than the market rate monthly housing payment the monthly housing payment shall be reduced to be equal to the market rate monthly housing payment.

STEP 4: VERIFICATION

A. All information provided by Applicants and Tenants related to their eligibility is required to be verified.

CHAPTER 5. DETERMINING INCOME AND CALCULATING RENT

5-1 Introduction

A. Owners must determine the amount of a family's income before the family is allowed to move into assisted housing and at least annually thereafter. The amount of assistance paid on behalf of the family is calculated using the family's annual income less allowable deductions. HUD program regulations specify the types and amounts of income and deductions to be included in the calculation of annual and adjusted income.

B. Although the definitions of annual and adjusted income used for the programs covered in this handbook have some similarities with rules used by the U.S. Internal Revenue Service (IRS), the tax rules are different from the HUD program rules.

C. The most frequent errors encountered in reviews of annual and adjusted income determinations in tenant files fall in three categories:

1. Applicants and tenants failing to fully disclose income information;

2. Errors in identifying required income exclusions; and

3. Incorrect calculations of deductions often resulting from failure to obtain third-party verification.

Careful interviewing and thorough verification can minimize the occurrence of these errors.

D. Chapter 5 is organized as follows:

- **Section 1: Determining Annual Income** discusses the requirements regarding annual income and the procedure for calculating a family's annual income when determining eligibility. This section also includes guidance on determining income from assets.

- **Section 2: Determining Adjusted Income** describes the procedures and requirements for determining adjusted income based on allowable deductions.

- **Section 3: Verification** presents the requirements for verifying information provided by applicants and tenants related to their eligibility.

- **Section 4: Calculating Tenant Rent** discusses the methods for calculating the tenant's portion of rent under the different programs covered by this handbook.

5-2 Key Terms

A. There are a number of technical terms used in this chapter that have very specific definitions established by federal statute or regulations, or by HUD. These terms are listed in Figure 5-1 and their definitions can be found in the Glossary to this handbook. It is important to be familiar with these definitions when reading this chapter.

B. The terms "disability" and "persons with disabilities" are used in two contexts – for civil rights protections, and for program eligibility purposes. Each use has specific definitions.

1. When used in context of protection from discrimination or improving the accessibility of housing, the civil rights-related definitions apply.

2. When used in the context of eligibility under multifamily subsidized housing programs, the program eligibility definitions apply.

NOTE: See the Glossary for specific definitions and paragraph 2-23 for an explanation of this difference.

Figure 5-1: Key Terms

• Adjusted income	• Live-in aide
• Annual income	• Low-income family
• Assets	• Market rent
• Assistance payment	• Minimum rent
• Assisted rent	• Operating rent
• Assisted tenant	• Project Assistance Contract (PAC)
• Basic rent	• PRAC Operating Rent
• Co-head of household	• Project Rental Assistance Contract (PRAC)
• Contract rent	• Project assistance payment
• Dependent	• Project rental assistance payment
• Extremely low-income family	• Tenant rent
• Foster adult	• Total tenant payment
• Foster children	• Unearned income
• Full-time student	• Utility allowance
• Gross rent	• Utility reimbursement
• Hardship exemption	• Very low-income family
• Head of household	• Welfare assistance
• Housing assistance payment (HAP)	• Welfare rent
• Income limit	

Section 1: Determining Annual Income

5-3 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 1: Determining Annual Income. The citation and its title are listed below.

- 24 CFR 5.609 Annual Income

5-4 Key Requirements

A. Annual income is the amount of income that is used to determine a family's eligibility for assistance. Annual income is defined as follows:

1. All amounts, monetary or not, that go to or are received on behalf of the family head, spouse or co-head (even if the family member is temporarily absent), or any other family member; or

2. All amounts anticipated to be received from a source outside the family during the 12-month period following admission or annual recertification effective date.

B. Annual income includes all amounts that are not specifically excluded by regulation. Exhibit 5-1, Income Inclusions and Exclusions, provides the complete list of income inclusions and exclusions published in the regulations and *Federal Register* notices.

C. Annual income includes amounts derived (during the 12-month period) from assets to which any member of the family has access.

5-5 Methods for Projecting and Calculating Annual Income

A. The requirements for determining whether a family is eligible for assistance, and the amount of rent the family will pay, require the owner to project or estimate the annual income that the family expects to receive. There are several ways to make this projection. The following are two acceptable methods for calculating the annual income anticipated for the coming year:

1. Generally the owner must use current circumstances to anticipate income. The owner calculates projected annual income by annualizing *current* income. Income that may not last for a full 12 months (e.g., unemployment compensation) should be calculated assuming current circumstances will last a full 12 months. If changes occur later in the year, an interim recertification can be conducted to change the family's rent.

2. If information is available on changes expected to occur during the year, use that information to determine the total *anticipated* income from all known sources during the year**. For example, if a verification source reports that a union contract calls for a 2% pay increase midway through

the year, the owner may add the total income for the months before, and the total for the months after the increase**.

Example – Calculating Anticipated Annual Income

A teacher's assistant works nine months annually and receives $1,300 per month. During the summer recess, the teacher's assistant works for the Parks and Recreation Department for $600 per month. The owner may calculate the family's income using either of the following two methods:

1. Calculate annual income based on current income: $15,600 ($1,300 x 12 months).

   The owner would then conduct an interim recertification at the end of the school year to recalculate the family's income during the summer months at reduced annualized amount of $7,200 ($600 x 12 months). The owner would conduct another interim recertification when the tenant returns to the nine-month job.

2. Calculate annual income based on anticipated changes through the year:

   $11,700 ($1,300 x 9 months)

   + 1,800 ($ 600 x 3 months)

   $13,500

   Using the second method, the owner would not conduct an interim re-examination at the end of the school year. In order to use this method effectively, history of income from all sources in prior years should be available.

B. Once all sources of income are known and verified, owners must convert reported income to an annual figure. Convert periodic wages to annual income by multiplying:

   1. Hourly wages by the number of hours worked per year (2,080 hours for full-time employment with a 40-hour week and no overtime);

   2. Weekly wages by 52;

   3. Bi-weekly wages (paid every other week) by 26;

   4. Semi-monthly wages (paid twice each month) by 24; and

   5. Monthly wages by 12.

   To annualize other than full-time income, multiply the wages by the actual number of hours or weeks the person is expected to work.

Example – Anticipated Increase in Hourly Rate

February 1 Certification effective date
$7.50/hour Current hourly rate
$8.00/hour New rate to be effective March 15

(40 hours per week x 52 weeks = 2,080 hours per year)

February 1 through March 15 =	6 weeks
6 weeks x 40 hours =	240 hours
2,080 hours minus 240 hours =	1,840 hours

(check: 240 hours + 1,840 hours = 2,080 hours)

Annual Income is calculated as follows:

240 hours x $7.50 =	$1,800	
$1,840 hours x $8.00 =	$14,720	
Annual Income		$16,520

(See **Appendix 8** for an explanation of the correct approach to rounding numbers.)

C. Some circumstances present more than the usual challenges to estimating anticipated income. Examples of challenging situations include a family that has sporadic work or seasonal income or a tenant who is self-employed. In all instances, owners are expected to make a reasonable judgment as to the most reliable approach to estimating what the tenant will receive during the year. In many of these challenging situations, midyear or interim recertifications may be required to reflect changing circumstances. Some examples of approaches to more complex situations are provided below.

Examples – Irregular Employment Income

Seasonal work. Clyde Kunkel is a roofer. He works from April through September. He does not work in rain or windstorms. His employer is able to provide information showing the total number of regular and overtime hours Clyde worked during the past three years. To calculate Clyde's anticipated income, use the average number of regular hours over the past three years times his current regular pay rate, and the average overtime hours times his current overtime rate.

Sporadic work. Justine Cowan is not always well enough to work full-time. When she is well, she works as a typist with a temporary agency. Last year was a good year and she worked a total of nearly six months. This year, however, she has more medical problems and does not know when or how much she will be able to work. Because she is not working at the time of her recertification, it will be best to exclude her employment income and remind her that she must return for an interim recertification when she resumes work.

Examples – Irregular Employment Income

Sporadic work. Sam Daniels receives social security disability. He reports that he works as a handyman periodically. He cannot remember when or how often he worked last year: he says it was a couple of times. Sam's earnings appear to fit into the category of nonrecurring, sporadic income that is not included in annual income. Tell Sam that his earnings are not being included in annual income this year, but he must report to the owner any regular work or steady jobs he takes.

Self-employment income. Mary James sells beauty products door-to-door on consignment. She makes most of her money in the months prior to Christmas but has some income throughout the year. She has no formal records of her income other than a copy of the IRS Form 1040 she files each year. With no other information available, the owner will use the income reflected on Mary's copy of her form 1040 as her annual income.

5-6 Calculating Income—Elements of Annual Income

A. Income of Adults and Dependents

1. Figure 5-2 summarizes whose income is counted.

2. Adults. Count the annual income of the head, spouse or co-head, and other adult members of the family. In addition, persons under the age of 18 who have entered into a lease under state law are treated as adults, and their annual income must also be counted. These persons will be either the head, spouse, or co-head; they are sometimes referred to as emancipated minors.

   NOTE: If an emancipated minor is residing with a family as a member other than the head, spouse, or co-head, the individual would be considered a dependent and his or her income handled in accordance with subparagraph 3 below.

3. Dependents. A dependent is a family member who is under 18 years of age, is disabled, or is a full-time student

   The head of the family, spouse, co-head, foster child, or live-in aide are never dependents. Some income received on behalf of family dependents is counted and some is not.

   a. *Earned* income of minors (family members under 18) is not counted.

   b. Benefits or other *unearned* income of minors is counted.

Figure 5-2: Whose Income is Counted?

Members	Employment Income	Other Income (including income from assets)
Head	Yes	Yes
Spouse	Yes	Yes
Co-head	Yes	Yes
Other adult *(including foster adult)*	Yes	Yes
Dependents		
-Child under 18	No	Yes
Full-time student over 18	See Note	Yes
*Foster child under 18	No	Yes*
Nonmembers		
Live-in aide	No	No

NOTE: The earned income of a full-time student 18 years old or older who is a dependent is excluded to the extent that it exceeds $480.

c. When more than one family shares custody of a child and both families live in assisted housing, only one family at a time can claim the dependent deduction. The family that counts the dependent deduction also counts the unearned income of the child. The other family claims neither the dependent deduction nor the unearned income of the child.

d. When full-time students who are 18 years of age or older are dependents, a small amount of their earned income will be counted. Count only earned income up to a maximum of $480 per year for full-time students, age 18 or older, who are not the head of the family or spouse or co-head. If the income is less than $480 annually, count all the income. If the annual income exceeds $480, count $480 and exclude the amount that exceeds $480.

e. The income of full-time students 18 years of age or older who are members of the household but away at school is counted the same as the income for other full-time students. The income of minors who are members of the household but away at school is counted as the income for other minors.

f. All income of a full-time student, 18 years of age or older, is counted if that person is the head of the family, spouse, or co-head.

g. Payments received by the family for the care of foster children or foster adults are *not* counted. This rule applies only to payments

made through the official foster care relationships with local welfare agencies.

h. Adoption assistance payments in excess of $480 are not counted.

B. **Income of Temporarily Absent Family Members**

1. Owners must count all income of family members approved to reside in the unit, even if some members are temporarily absent.

2. If the owner determines that an absent person is no longer a family member, the individual must be removed from the lease and the HUD-50059.

3. A temporarily absent individual on active military duty must be removed from the family, and his or her income must not be counted unless that person is the head of the family, spouse, or co-head.

   a. However, if the spouse or a dependent of the person on active military duty resides in the unit, that person's income must be counted in full, even if the military member is not the head, or spouse of the head of the family.

   b. The income of the head, spouse, or co-head will be counted even if that person is temporarily absent for active military duty.

Examples – Income of Temporarily Absent Family Members

- John Chouse works as an accountant. However, he suffers from a disability that periodically requires lengthy stays at a rehabilitation center. When he is confined to the rehabilitation center, he receives disability payments equaling 80% of his usual income.

  During the time he is not in the unit, he will continue to be considered a family member. The owner will conduct an interim recertification. Even though he is not currently in the unit, his total disability income will be counted as part of the family's annual income.

- Mirna Martinez accepts temporary employment in another location and needs a portion of her income to cover living expenses in the new location. The full amount of the income must be included in annual income.

- Charlotte Paul is on active military duty. Her permanent residence is her parents' assisted unit where her husband and children live. Charlotte is not currently exposed to hostile fire. Therefore, because her spouse and children are in the assisted unit, her military pay must be included in annual income. (If her dependents or spouse were not in the unit, she would not be considered a family member and her income would not be included in annual income.)

C. ***Deployment of Military Personnel to Active Duty**

Owners are encouraged to be as lenient as responsibly possible to support affected households in situation where persons are called to active duty in the Armed Forces. Specific actions that owners should undertake to support military households include, but are not limited to:*

1. *Allow a guardian to move into the assisted unit on a temporary basis to provide care for any dependents the military person leaves in the unit. Income of the guardian temporarily living in the unit for this purpose is not counted as income.

2. Allow a tenant living in an assisted unit to provide care for any dependents of persons called to active duty in the Armed Forces on a temporary basis, as long as the head and/or co-head of household continues to serve in active duty. Income of the child (e.g., SSI benefits, military benefits) is not counted as income of the person providing the care.

3. Exclude from annual income special pay received by a household member serving in the Armed Services who is exposed to hostile fire (see Exhibit 5-1).

4. Give consideration for any case involving delayed payment of tenant rent. Determine whether it is appropriate to accept a late payment.

5. Allow the assistance payment and the lease to remain in effect for a reasonable period of time (depending on the length of deployment) beyond that required by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. §§ 501-591, even though the adult members of the military family are temporarily absent from the assisted unit.*

D. Income of Permanently Confined Family Members

1. An individual permanently confined to a nursing home or hospital may not be named as family head, spouse, or co-head but may continue as a family member at the family's discretion. The family's decision on whether or not to include the permanently confined family member as a family member determines if that person's income will be counted.

   a. *Include* the individual as a family member and the income and allowable deductions related to the medical care of the permanently confined individual are counted; or

   b. *Exclude* the individual as a family member and the income and allowances based on the medical care of the permanently confined individual are not counted.

2. If the family elects to include the permanently confined member, the individual is listed on the HUD-50059 as an adult who is not the head, spouse, or co-head, even when the permanently confined family member is married to the person who is or will become the head of the family. The owner should consider extenuating circumstances that may prevent the confined member from being able to sign the HUD-50059. If the owner determines the confined member is unable to sign the HUD-50059,

the owner must document the file why the signature was not obtained. If the family elects not to include the permanently confined member, the individual would not be listed on the HUD-50059.**

E. **Educational Scholarships or Grants**

All forms of student financial assistance (grants, scholarships, educational entitlements, work study programs, and financial aid packages) are excluded from annual income **except for students receiving Section 8 assistance.** This is true whether the assistance is paid to the student or directly to the educational institution

For students receiving Section 8 assistance, all financial assistance a student receives (1) under the Higher Education Act of 1965, (2) from private sources, or (3) from an institution of higher education that is in excess of amounts received for tuition is included in annual income except if the student is over the age of 23 with dependent children or the student is living with his or her parents who are receiving Section 8 assistance. See Paragraph 3-13 for further information on eligibility of students to receive Section 8 assistance and the Glossary for the definition of Student Financial Assistance.

F. **Alimony or Child Support**

Owners must count alimony or child support amounts awarded by the court unless the applicant certifies that payments are not being made *and* that he or she has taken all reasonable legal actions to collect amounts due, including filing with the appropriate courts or agencies responsible for enforcing payment.

1. The owner may accept printouts from the court or agency responsible for enforcing support payments, or other evidence indicating the frequency and amount of support payments actually received.

2. Child support paid to the custodial parent through a state child support enforcement or welfare agency may be included in the family's monthly welfare check and may be designated in different ways. In some states these payments are not identified as separate from the welfare grant. In these states, it is important to determine which portion is child support and not to count it twice. In other states, the payment may be listed as child support or as "pass-through" payments. These amounts must be counted as annual income.

3. When no documentation of child support, divorce, or separation is available, either because there was no marriage or for another reason, the owner may require the family to sign a certification stating the amount of child support received.

G. **Regular Cash Contributions and Gifts**

1. Owners must count as income any regular contributions and gifts from persons not living in the unit. These sources may include rent and utility

payments paid on behalf of the family, and other cash or noncash contributions provided on a regular basis.

Examples – Regular Cash Contributions

- The father of a young single parent pays her monthly utility bills. On average he provides $100 each month. The $100 per month must be included in the family's annual income.
- The daughter of an elderly tenant pays her mother's $175 share of rent each month. The $175 value must be included in the tenant's annual income.

2. Groceries and/or contributions paid directly to the childcare provider by persons not living in the unit are excluded from annual income.

3. Temporary, nonrecurring, or sporadic income (including gifts) is not counted.

H. **Income from a Business**

When calculating annual income, owners must include the net income from operation of a business or profession including self-employment income. Net income is gross income less business expenses, interest on loans, and depreciation computed on a straight-line basis.

1. In addition to net income, owners must count any salaries or other amounts distributed to family members from the business, and cash or assets withdrawn by family members, except when the withdrawal is a reimbursement of cash or assets invested in the business.

2. When calculating net income, owners must not deduct principal payments on loans, interest on loans for business expansion or capital improvements, other expenses for business expansion, or outlays for capital improvements.

3. If the net income from a business is negative, it must be counted as zero income. A negative amount must not be used to offset other family income.

I. ****Periodic Social Security Payments**

Count the gross amount, before deductions for Medicare, etc., of periodic Social Security payments. Include payments received by adults on behalf of individuals under the age of 18 or by individuals under the age of 18 for their own support.**

J. Adjustments for Prior Overpayment of Benefits

If an agency is reducing a family's benefits to adjust for a prior overpayment (e.g., social security, SSI, TANF, or unemployment benefits), count the amount that is actually provided after the adjustment.

Example – Adjustment for Prior Overpayment of Benefits

Lee Park's social security payment of $250 per month is being reduced by $25 per month for a period of six months to make up for a prior overpayment. Count his social security income as $225 per month for the next six months and as $250 per month for the remaining six months.

K. Public Assistance Income in As-Paid Localities

1. Special calculations of public assistance income are required for "as-paid" state, county, or local public assistance programs. An "as-paid" system is one:

   a. In which the family receives an amount from a public agency specifically for shelter and utilities; and

   b. In which the amount is adjusted based upon the actual amount the family pays for shelter and utilities.

2. The public assistance amount specifically designated for rent and utilities is called the "welfare rent."

3. To determine annual income for public assistance recipients in "as-paid" localities, include the following:

   a. The amount of the family's grant for other than shelter and utilities; and

   b. The maximum amount the welfare department can pay for shelter and utilities for a family of that size (i.e., the welfare rent). This may be different from the amount the family is actually receiving.

4. Each as-paid locality works somewhat differently, and many are subject to court-ordered modifications to the basic policy. Owners should discuss how the rules are applied with the HUD Field Office.

Example – Welfare Income in "As Paid" Localities

At application, a family's welfare grant is $300, which includes $125 for basic needs and $175 for shelter and utilities (based upon where the family is now living). However, the maximum the welfare agency could allow for shelter and utilities for this size family is $190.

Count the following as income:

$125 Amount family receives for basic needs

$190 Maximum for shelter and utilities

$315 Monthly public assistance income

L. Periodic Payments from Long-Term Care Insurance, Pensions, Annuities, and Disability or Death Benefits

1. The full amount of periodic payments from annuities, insurance policies, retirement funds, pensions, and disability or death benefits is included in annual income. (See subparagraph O below for information on the withdrawal of cash or assets from an investment.) Payments such as Black Lung Sick Benefits, Veterans Disability, and Dependent Indemnity Compensation for the Widow of a Killed in Action Serviceman are examples of such periodic payments.

2. Withdrawals from retirement savings accounts such as Individual Retirement Accounts and 401K accounts that are not periodic payments do not fall in this category and are not counted in annual income (see paragraph 5.7 G.4).

Example – Withdrawals from IRAs or 401K Accounts

Isaac Freeman retired recently. He has an IRA account but is not receiving periodic payments from it because his pension is adequate for his routine expenses. However, he has withdrawn $2,000 for a trip with his children. The withdrawal is not a periodic payment and is not counted as income.

3. If the tenant is receiving long-term care insurance payments, any payments in excess of $180 per day must be counted toward the gross annual income. (**NOTE:** Payment of long-term care insurance premiums are an eligible medical expense – see paragraph 5-10 D.8.k.)

4. *Federal Government/Uniformed Services pension funds paid to a former spouse.*

Federal Government/Uniformed Services pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are not counted as annual income. The state court has, in the settlement of the parties' marital assets, determined the extent to which each party shares in the ownership of the pension. That portion of the pension that is ordered by the court (and authorized by the Office of Personnel Management (OPM), to be paid to the applicant's/tenant's former spouse is no longer an asset of the applicant/tenant and therefore is not counted as income. However, any pension funds authorized by OPM, pursuant to a court order, to be paid to the former spouse of a Federal government employee is counted as income for a tenant/applicant receiving such funds.

Example: Joan Carson is a retired Federal government employee receiving a retirement pension. She is also the recipient of Section 8 housing assistance and involved in a divorce proceeding. In settling the assets of the marriage between Mrs. Carson and her former husband, the court ordered that one half of her pension be paid directly to her former husband in the amount of $20,000. The court provided OPM with clear, specific and express instructions acceptable for OPM to process the payment to Mrs. Carson's former husband. OPM authorized the payment of pension benefits to Mrs. Carson's former husband in the amount of $20,000. The $20,000 represents an asset disposed of as a result of a court decree. At the interim reexamination of her income, Mrs. Carson indicated a change in her income due to the court ordered payment of pension benefits to her former husband. The PHA requested that Mrs. Carson provide a copy of her statement from OPM evidencing the payment of pension benefits to her (her statement reflected the line item payment to her former husband due to the court order). That portion of the pension paid to her former husband no longer belongs to Mrs. Carson and is not counted as income.

The OPM is responsible for handling court orders (any judgments or property settlements issued by or approved by any court of any state, the

District of Columbia, the Commonwealth of Puerto Rico, Guam, The Northern Mariana Islands, or the Virgin Islands in connection with the divorce, annulment of marriage, or legal separation of a Federal government employee or retiree) affecting current and retired Federal government employees. See 5 C.F.R. § 838.103. OPM must comply with court orders, decrees, or court-approved property settlement agreements in connection with divorces, annulments of marriage, or legal separations of employees that award a portion of the former Federal government employee's retirement benefits. Id. at § 838.101(a)(1). State courts ordering a judgment or property settlement in connection with divorce, annulment of marriage, or legal separation have the responsibility of issuing clear, specific, and express instructions to OPM with regards to providing benefits to former spouses. Id. at § 838.122. In response to instructions from state courts, OPM will authorize payments to the former spouses. Id. at § 838.121. Once the payments have been

authorized by OPM, the reduced pension amount paid to the retired Federal employee (the tenant/applicant) will be reflected in the tenant's/applicant's statement from OPM. Former spouses of Federal government employees receiving court ordered pension benefits are provided a Form-1099 reflecting pension benefits received from the retired Federal government employee. In verifying the income of tenants/applicants, owners should require that tenants/applicants provide any copies of statements from OPM verifying pension benefits (including any reductions pursuant to a court order, decree or court-approved property settlement agreement), and any evidence of survivor benefits, pensions or annuities received from retired Federal government employees including, but not limited to, a Form-1099. (See Paragraph 5-7.G.5 for more information on the treatment of income from Federal government pensions.)

5. *Other State, local government, social security or private pensions paid to a former spouse.

   Other state, local government, social security or private pension funds paid directly to an applicant's/tenant's former spouse pursuant to the terms of a court decree of divorce, annulment, or legal separation are also not counted as annual income and should be handled in the same manner as 4, above. The decree and copies of statements should be obtained in order to verify the net amount of the pension that should be applied in order to determine eligibility and calculate rent.*

M. Income from Training Programs

1. Amounts received under HUD-funded training programs are excluded from annual income.

2. Incremental earnings and benefits received by any family member due to participation in qualifying state or local employment training programs are excluded. Income from training programs not affiliated with a local government, and income from the training of a family member resident to serve on the management staff, is also excluded.

   a. Excluded income must be received under employment training programs with clearly defined goals and objectives and for a specific, limited time period. The initial enrollment must not exceed one year, although income earned during extensions for additional specific time periods may also be eligible for exclusion

   b. Training income may be excluded only for the period during which the family member participates in the employment training program.

   c. Exclusions include stipends, wages, transportation or child care payments, or reimbursements.

d. Income received as compensation for employment is excluded only if the employment is a component of a job training program. Once training is completed, the employment income becomes income that is counted.

e. Amounts received during the training period from sources that are unrelated to the job training program, such as welfare benefits, social security payments, or other employment, are not excluded.

2. Owners may ask to use project funds or funds from the Residual Receipts account to underwrite all or a portion of the cost of developing, maintaining, and managing a job training program for project residents if funds are available.

a. The Field Office will make the determination if the job training program may be approved, and if project funds are sufficient to fund the job training program and maintain the physical and financial integrity of the project. Job training programs may be either on-site at the project or off-site. For example, job training programs that have partnerships with local colleges, community based organizations, or local business, may have in-house job training programs designed for project residents.

b. Funds that an owner may choose to use to underwrite a job training program may include Section 8 funds, Community Development Block Grant funds, or housing authority funds. These funds may be used to cover the costs of various components of a job training program, including course materials, computer software, computer hardware, or personnel costs. Also, contractors and subcontractors, in connection with work performed under a Flexible Subsidy contract, may elect to hire project residents to perform certain skills required under the contract. If the employment of the project residents was pursuant to an apprenticeship program, this could constitute a training program using HUD funds, and income received by the tenants in the apprenticeship program will qualify as an exclusion from income.

N. Resident Services Stipends

Resident services stipends are generally modest amounts of money received by residents for performing services such as hall monitoring, fire patrol, lawn maintenance, and resident management.

1. If the resident stipend exceeds $200 per month, owners must include the entire amount in annual income.

2. If the resident stipend is $200 or less per month, owners must exclude the resident services stipend from annual income.

O. **Income Received by a Resident of an Intermediate Care Facility for the Mentally Retarded or for the Developmentally Disabled (ICF/MR or ICF/DD) and Assisted Living Units in Elderly Projects**

1. An intermediate care facility is a group home for mentally retarded or developmentally disabled individuals (ICF/MR or ICF/DD). The term "intermediate care facility" is one used by state mental health departments for group homes serving these residents.

2. Assisted living units are units in projects developed for elderly residents with project-based assistance that have been converted to assisted living units.

3. The local agency responsible for Medicaid provides funds directly to group home operators and assisted living providers for services.

4. Annual income at an ICF/MR, ICF/DD, or assisted living unit must include:

   a. The SSI payment a tenant receives or the facility receives on behalf of the tenant; plus

   b. All other income the tenant receives from sources other than SSI that are not excluded from income by HUD regulations (see Exhibit 5-1). Examples of other sources of income include wages, pensions, income from sheltered workshops, income from a trust, or other interest income.

   c. The personal allowance of an individual residing in an ICF/MR or ICF/DD is not included in annual income. If the owner is unable to determine the actual amount of the personal allowance, use $30.

5. Annual income does not include the enhanced benefit portion of the SSI that is provided to pay for services. In some instances, a resident's SSI income may be reduced between annual recertifications if the resident's earnings exceed a specified amount. If this happens, the resident may request an interim recertification.

P. **Withdrawal of Cash or Assets from an Investment**

The withdrawal of cash or assets from an investment received as periodic payments should be counted as income. **Lump sum receipts from pension and retirement funds are counted as assets. If benefits are received through periodic payments, do not count any remaining amounts in the account as an asset. See Paragraph 5-7 G.2 for guidance on calculating income from an asset.**

Q. **Lump Sum Payments Counted as Income**

1. Generally, lump sum amounts received by a family, such as inheritances, insurance settlements, or proceeds from sale of property are considered assets, not income.

2. When social security or SSI benefit income is paid in a lump sum as a result of deferred periodic payments, that amount is *excluded* from annual income.

3. Settlement payments from claim disputes over welfare, unemployment, or similar benefits may be counted as assets, but lump sum payments caused by *delays in processing* periodic payments for unemployment or welfare assistance are included as income.

   How lump sum payments for delayed start of benefits are counted depends upon the following:

   a. When the family reports the change;

   b. When an interim re-examination is conducted; and

   c. Whether the family's income increases or decreases as a result.

   A lump sum payment resulting from delayed benefit income may be treated in either of the two ways illustrated in the example shown in Figure 5-3.

4. Lottery winnings paid in one payment are treated as assets. Lottery winnings *paid in periodic payments* must be counted as income.

Figure 5-3: Treatment of Delayed Benefit Payments Received in a Lump Sum

Family member loses his/her job on October 19 and applies for unemployment benefits. The family receives a lump sum payment of $700 in December to cover the period from 10/20 to 12/5 and begins to receive $100 a week effective 12/6.

Option A: The owner processes one interim re-examination immediately effective 11/1 and a second interim after unemployment benefits are known.

	10/1	11/1	12/1	1/1	2/1
Monthly gross income	800	*0	*0	492**	492**
Monthly allowances (three minors x 480 / 12 months)	120	-	-	120	120
Monthly adjusted income	680	0	0	372	372
Total tenant payment (TTP)	204	25	25	25***	112***

* The family's income is calculated at $0/month beginning November 1, continuing until benefits actually begin and new income is calculated. TTP is set at the minimum rent.

** Family's actual income for 1/1 is $100/week x 52 weeks = $5,200 / 12 = $433.

However, because the family's TTP was calculated at zero income for the months of November and December (the period eventually covered by the $700 lump sum payment), the annual income to be used in calculating monthly gross income should be as follows:

$100/week benefit x 52 weeks = $5,200 + $700 lump sum payment = $5,900 annual gross income/ 12 = $492.

*** Increased rent does not start until 2/1 in order to give the family notice of rent increase.

Option B: The owner processes one interim re-examination after unemployment benefits are known.

	10/1	11/1	12/1	1/1	2/1
Monthly gross income	800	0/800*	0/800*	433*	433*
Monthly allowances (three minors x 480 / 12 Months)	120	120	120	120	120
Monthly adjusted income	680	0/680	0/680	313	313
Total tenant payment	204	204*	204*	94	94
Recalculated TTP	-	94***	94*	94	94
Rent credit (204 – 94=)	-	110	110	-	-

* Family's actual income for 11/1 and 12/1 is zero, but because the owner does not process an interim re-examination, the family's TTP continues to be calculated using $800 as monthly gross income. Beginning 1/1, monthly gross income is known to be $100/week, or $433/month.

** The lump sum payment is taken into account by making the recertification retroactive to 11/1. Annual income is calculated as $5,200 / 12 = $433 monthly gross income.

*** TTP for November and December recalculated as $433 monthly gross income and $313 monthly adjusted income x .30 = 94 with credit or refund to family of $110/month for each of these two months for difference between TTP paid of $204 and recalculated TTP of $94.

R. Exclusions from Income

1. Regulations for the multifamily subsidized housing programs covered by this handbook specifically exclude certain types of income from annual income. However, many of the items listed as exclusions from annual income under HUD requirements are items that the IRS includes as taxable income. Therefore, it is important for owners to focus specifically on the HUD program requirements regarding annual income.

2. Among the items that are excluded from annual income are the value of food provided through:

   a. The Meals on Wheels program, food stamps, or other programs that provide food for the needy;

   b. Groceries provided by persons not living in the household; and

   c. Amounts received under the School Lunch Act and the Child Nutrition Act of 1966, including reduced lunches and food under the Special Supplemental Food Program for Women, Infants and Children (WIC).

Examples – Income Exclusions

- The Value of Food Provided through the Meals on Wheels Program or Other Programs Providing Food for the Needy. Jack Love receives a hot lunch each day during the week in the community room and an evening meal in his apartment. One meal is provided through the Meals on Wheels program. A local church provides the other. The value of the meals he receives is not counted as income.
- Groceries provided by persons not living in the household. Carrie Sue Colby's mother purchases and delivers groceries each week for Carrie Sue and her two year old. The value of these groceries is not counted as income despite the fact that these are a regular contribution or gift.
- Amounts Received Under WIC or the School Lunch Act. Lydia Jeffries' two children receive a free breakfast and reduced priced lunches at school every day through the Special Supplemental Food Program for Women, Infants and Children (WIC). The value of this food is not counted as income.

**

3. Some additional examples of income that is excluded from the calculation of annual income follow.

Examples – Income Exclusions

- Resident service stipends. Rich Fuller receives $50 a month for distributing flyers for management. This amount is excluded from annual income.

- Deferred periodic payments of social security benefits. Germain Johnson received $32,000 in deferred social security benefits following a lengthy eligibility dispute. This delayed payment of social security benefits is treated as an asset, not as income.

- Income from training programs. Jennifer Jones is participating in a qualified state-supported employment training program every afternoon to learn improved computer skills. Each morning, she continues her regular job as a typist. The $250 a week she receives as a part-time typist is included in annual income. The $150 a week she receives for participation in the training program is excluded in annual income.

- Earned Income Tax Credit refund payments. Mary Frances Jackson is eligible for an earned income tax credit. She receives payments from her employer each quarter because of the tax credit. These payments are excluded in annual income.

**

5-7 Calculating Income from Assets

Annual income includes amounts derived from assets to which family members have access.

A. What is Considered to Be an Asset?

1. Assets are items of value that may be turned into cash. A savings account is a cash asset. The bank pays interest on the asset. The interest is the *income* from that asset.

2. Some tenants have assets that are not earning interest. A quantity of money under a mattress is an asset: it is a thing of value that could be used to the benefit of the tenant, but under the mattress it is not producing income.

3. Some belongings of value are not considered assets. Necessary personal property is not counted as an asset. Exhibit 5-2 summarizes the items that are considered assets and those that are not.

B. Determining Income from Assets

Note: For families receiving only BMIR assistance, it is not necessary to determine whether family assets exceed $5,000. The rule for imputing income from assets does not apply to the BMIR program.

1. The calculation to determine the amount of income from assets to include in annual income considers both of the following:

   a. The total cash value of the family's assets; and

   b. The amount of income those assets are earning or could earn.

2. The rule for calculating income from assets differs depending on whether the total cash value of family assets is $5,000 or less, or is more than $5,000.

C. **Determining the Total Cash Value of Family Assets**

1. To comply with the rule for determining the amount of income from assets, it is necessary to first determine whether the total "cash value" of family assets exceeds $5,000.

   a. The "cash value" of an asset is the market value less reasonable expenses that would be incurred in selling or converting the asset to cash, such as the following:

      (1) Penalties for premature withdrawal;

      (2) Broker and legal fees; and

      (3) Settlement costs for real estate transactions.

      The cash value is the amount the family could actually receive in cash, if the family converted an asset to cash.

Example – Calculating the Cash Value of an Asset

A family has a certificate of deposit (CD) in the amount of $5,000 paying interest at 4%. The penalty for early withdrawal is three months of interest.

$5,000 x 0.04 = $200 in annual income

$200/12 months = $16.67 interest per month

$16.67 x 3 months = $50.01

$5,000 - $50 = $4,950 cash value of CD

   b. It is essential to note that a family is not required to convert an asset to cash. Determining the cash value of the asset is done simply as a calculation by the owner because it is a required step when determining income from assets under program requirements.

D. Assets Owned Jointly

1. If assets are owned by more than one person, prorate the assets according to the percentage of ownership. If no percentage is specified or provided by a state or local law, prorate the assets evenly among all owners.

2. If an asset is not effectively owned by an individual, do not count it as an asset. An asset is not effectively owned when the asset is held in an individual's name, but (a) the asset and any income it earns accrue to the benefit of someone else who is not a member of the family, and (b) that other person is responsible for income taxes incurred on income generated by the assets.

3. Determining which individuals have ownership of an asset requires collecting as much information as is available and making the best judgment possible based on that information.

Example – Determining the Cash Value of an Asset

The "cash value" of an asset is the amount a family would receive if the family turned a noncash asset into cash.

The cash value is the market value—or the amount another person would pay to acquire the asset—less the cost to turn the asset into cash.

If a family owns real estate, it may be necessary to consider the family's equity in the property as well as the expense to sell the property.

To determine the family's equity, subtract amounts owed on the property from its market value:

Market value
- Mortgage amount owed
Equity in the property

Calculate the cash value by subtracting the expense of selling the property:

Equity
- Expense of selling
Cash Value

Juanita Player owns a rental house. The market value is $100,000. She owes $60,000. The cost to dispose of this house would be $8,000. The owner would determine the cash value as follows:

Market Value	$100,000
Mortgage amount	- $60,000
	40,000
Cost of disposing of the asset (real estate commission, and other costs of sale)	- $8,000
Cash Value	**$32,000**

a. In some instances, but not all, knowing whose social security number is connected with the asset may help in identifying ownership. Owners should be aware that there are many situations in which a social security number connected with an asset does not indicate ownership and other situations where there is ownership without connection to a social security number.

b. Determining who has contributed to an asset or who is paying taxes on the asset may assist in identifying ownership.

Examples – Jointly Owned Assets

- Helen Wright is an assisted-housing tenant. She and her daughter, Elsie Duncan, have a joint savings account. Mother and daughter both contribute to the account. They have used the account for trips together and to cover emergency needs for either of them. Assume in this example that state law does not specify ownership. Even though either Helen Wright or Elsie Duncan could withdraw the entire asset for her own use, count Helen's ownership as 50% of the account.
- Jean Boucher's name is on her mother's savings account to ensure that she can access the funds for her mother's care. The account is not effectively owned by Jean and should not be counted as her asset.

E. Calculating Income from Assets When Assets Total $5,000 or Less

If the total cash value of all the family's assets is $5,000 or less, the actual income the family receives from assets is the amount that is included in annual income as income from assets.

F. Calculating Income from Assets When Assets Exceed $5,000

1. When net family assets are more than $5,000, annual income includes the greater of the following:

   a. Actual income from assets; or

   b. A percentage of the value of family assets based upon the current passbook savings rate as established by HUD. This is called *imputed* income from assets. The passbook rate is currently set at 2%.

2. To begin this calculation, first add the cash value of all assets. Multiply the total cash value of all assets by .02. The product is the "imputed income" from assets. Then, add the actual income from all assets. The greater of the imputed income from assets or the actual income from assets is included in the calculation of annual income.

Example – Use Actual Income from Assets When Total Net Family Assets are $5,000 or Less

Type of Asset	Cash Value	Actual Yearly Income
Certificate of Deposit $1,000 withdrawal fee $50 interest @ 4%	$950	$40
Savings Account $500 interest @ 2.5%	$500	$13
Stock $300 Not paying dividends	$300	$0
Total	$1,750	$53

The total cash value of the family's assets is $1,750. Therefore, the amount that is added to annual income as income from assets is the actual income earned or $53.

Example – Imputed Income from Assets

"Imputed" means "attributed" or "assigned." Imputing income from assets is "assigning" an amount of income solely for the sake of the annual income calculation. The imputed income is not real income.

For example, money under a mattress is not earning income. If the money were put in a savings account it would earn interest. Imputed income from such an asset is the interest the money would earn if it were put in a savings account.

A family with cash under a mattress is not required to put the cash in a savings account; but when the owner is calculating income for a family with more than $5,000 in assets, the owner must assign an amount that cash would earn if it were in a savings account.

Example – Determining Income from Assets When Net Family Assets Exceed $5,000

Type of Asset	Cash Value	Actual Yearly Income
Checking Account (non-interest bearing)	$455	$0
Savings Account (interest at 2.5%)	$6,000	$150
Stocks (not paying dividends this year)	$3,000	$0
Total	$9,455	$150

Total cash value of assets is greater than $5,000. Therefore, it is necessary to compare the actual income from assets to the imputed income from assets.

The total cash value of assets ($9,455) is multiplied by 2% to determine the imputed income from assets.

.02 x $9,455 = $189

$189 is greater than the actual income from assets ($150).

In this case, therefore, the owner will add $189 to the annual income calculation as income from assets.

G. Calculating Income from Assets - Specific Types of Assets

1. Trusts.

   a. Explanation of trusts.

      (1) A trust is a legal arrangement generally regulated by state law in which one party (the creator or grantor) transfers property to a second party (the trustee) who holds the property for the benefit of one or more third parties (the beneficiaries). A trust can contain cash or other liquid assets or real or personal property that could be turned into cash. Generally, the assets are invested for the benefit of the beneficiaries.

      (2) Trusts may be revocable or nonrevocable. A revocable trust is a trust that the creator of the trust may amend or end (revoke). When there is a revocable trust, the creator has access to the funds in the trust account. When the creator sets up a nonrevocable trust, the creator has no access to the funds in the account.

      (3) The beneficiary frequently will be unable to touch any of the trust funds until a specified date or event (e.g., the

beneficiary's 21st birthday or the grantor's death). In some instances, the beneficiary may receive the regular investment income from the trust but not be able to withdraw any of the principal.

(4) The beneficiary and the grantor may be members of the same family. A parent or grandparent may have placed funds in trust to a child. If the trust is revocable, the funds may be accessible to the parent or grandparent but not to the child.

b. How to treat trusts.

(1) The basis for determining how to treat trusts relies on information about who has access to either the principal in the account or the income from the account.

(2) Revocable trusts. If any member of the tenant family has the right to withdraw the funds in the account, the trust is considered to be an asset and is treated as any other asset. The cash value of the trust (the amount the family member would receive if he or she withdrew all that could be withdrawn) is added to total net assets. The actual income received is added to actual income from assets.

Example – A Trust Accessible to Family Members

Assez Charaf lives alone. He has placed $20,000 in trust to his grandson to be available to the grandson upon the death of Assez. The trust is revocable, that is, Assez has control of the principal and interest in the account and can amend the trust or remove the funds at any time. In calculating Assez's income, the owner will add the $20,000 to Assez's net family assets and the actual income received on the trust to actual income from assets.

(3) Nonrevocable trusts. If no family member has access to either the principal or income of the trust at the current time, the trust is not included in the calculation of income from assets or in annual income.

If only the income (and none of the principal) from the trust is currently available to a family member, the income is counted in annual income, but the trust is not included in the calculation of income from assets.

(4) Nonrevocable trust as an asset disposed of for less than fair market value. If a tenant sets up a nonrevocable trust for the benefit of another person while residing in assisted

housing, the trust is considered an asset disposed of for less than fair market value (see subparagraph G.6 below).

– If the trust has been set up so income from the trust is regularly reinvested in the trust and is not paid back to the creator, the trust is calculated as any other asset disposed of for less than fair market value for two years and not taken into consideration thereafter.

Example – Nonrevocable Trust As an Asset Disposed of for Less Than Fair Market Value

Sarah Gordy placed $100,000 in a nonrevocable trust for her grandson. Last year, the trust produced $8,000, which was reinvested into the trust.

The trust is treated as an asset disposed of for less than fair market value for two years. (See paragraph 5.7 G.6.) No actual income from the trust is included in Sarah's annual income, but the value of the asset when it was given away, $100,000, is included in net family assets for two years from the date the trust was established.

– Nonrevocable trust distributing income. When a tenant places an asset in a nonrevocable trust but continues to receive income from the trust, the income is added to annual income *and* the trust is counted as an asset disposed of for less than market value for two years. Following the two-year period, the owner will count only the actual income distributed from the trust to the tenant.

Example – Nonrevocable Trust Distributing Income to the Creator/Tenant

Reggie Bouchard has established a nonrevocable trust in the amount of $35,000 that no one in the tenant family controls. Income from the trust is paid to Reggie. Last year, he received $3,500.

The owner will count Reggie's actual anticipated income from the trust in next year's annual income.

Because the asset was disposed of for less than fair market value (see paragraph 5.7 G.6), the value of the asset given away, $35,000, is counted as an asset disposed of for less than fair market value for two years.

(5) Payment of principal from a trust. The beneficiary of a trust may receive funds from the trust in different ways. A beneficiary may receive the full value of a trust at one time. In that instance the funds would be considered a lump sum receipt and would be treated as an asset. A trust set up to provide support for a person with disabilities may pay only income from the trust on a periodic basis. Occasionally, however, a beneficiary may be given a portion of the trust principal on a periodic basis. When the principal is paid out on a periodic basis, those payments are considered regular income or gifts and are counted in annual income.

Example – Payment of Principal Amounts from a Trust

Jared Leland receives funds from a nonrevocable trust established by his parents for his support. Last year he received $18,000 from the trust. The attorney managing the trust reported that $3,500 of the funds distributed was interest income and $14,500 was from principal. Jared receives a payment of $1,500 each month (an amount that includes both principal and interest from the trust).

The owner will count the entire $18,000 Jared received as annual income.

c. Special needs trusts.

A special needs trust is a trust that may be created under some state laws, often by family members for disabled persons who are not able to make financial decisions for themselves. Generally, the assets within the trust are not accessible to the beneficiary.

(1) If the beneficiary does not have access to income from the trust, then it is not counted as part of income.

(2) If income from the trust is paid to the beneficiary regularly, those payments are counted as income.

Example – Special Needs Trust

Daryl Rockland is a 55-year-old person with disabilities, living with his elderly parents. The parents have established a special-needs trust to provide income for their son after they are gone. The trust is not revocable; neither the parents nor the son currently have access to the principal or interest. In calculating the income of the Rocklands, the owner will disregard the trust.

2. Annuities.

a. Annuity facts and terms.

(1) An annuity is a contract sold by an insurance company designed to provide payments, usually to a retired person, at specified intervals. Fixed annuities guarantee a certain payment amount, while variable annuities do not, but have the potential for greater returns.

- A hybrid annuity (also called a combination annuity) combines the features of a fixed annuity and a variable annuity.

- A deferred annuity is an annuity that delays income payments until the holder chooses to receive them. An immediate annuity is one that begins payments immediately upon purchase.

- A life annuity continues to pay out as long as the owner is alive. A single-life annuity provides income benefits for only one person. A joint life annuity is issued on two individuals, and payments continue in whole or in part as long as either individual is alive.

(2) Generally, a person who holds an annuity from which he or she is not yet receiving payments will also be earning income. In most instances, a fixed annuity will be earning interest at a specified fixed rate similar to interest earned by a CD. A variable annuity will earn (or lose) based on market fluctuations, as in a mutual fund.

(3) Most annuities charge surrender or withdrawal fees. In addition, early withdrawal usually results in tax penalties.

(4) Depending on the type of annuity and the current status of the annuity, the owner will need to ask different questions of the verification source, which will normally be the applicant or tenant's insurance broker.

b. Income after the holder begins receiving payments.

(1) When verifying an annuity, owners should ask the verification source whether the holder of the annuity has the right to withdraw the balance of the annuity. For annuities without this right, the annuity is not treated as an asset.

(2) Generally, when the holder has begun receiving annuity payments, the holder can no longer convert it to a lump sum of cash. In this situation, the holder will receive regular payments from the annuity that will be treated as regular income, and no calculations of income from assets will be made. **

c. Calculations when an annuity is considered an asset.

(1) When an applicant or tenant has the option of withdrawing the balance in an annuity, the annuity will be treated like any other asset. **It will be necessary to determine the cash value of the annuity in addition to determining the actual income earned.

(2) In most instances, an annuity from which payments have not yet been made is earning income on the balance in the annuity. A fixed annuity will earn income at a fixed rate in the same manner that a CD earns income. A variable annuity will earn (or lose) based on current market conditions, as with a mutual fund.

(3) The owner will need to verify with the insurance agent or other appropriate source:

- The right of the holder to withdraw the balance (even if penalties are involved).
- The basis on which the annuity may be expected to grow during the coming year.
- The surrender or early withdrawal penalty fee.
- The tax rate and the tax penalty that would apply if the family withdrew the annuity.

(4) The cash value will be the full value of the annuity, less the surrender (or withdrawal) penalty, and less any taxes and tax penalties that would be due.

(5) The actual income is the balance in the annuity times the percentage (either fixed or variable) at which the annuity is expected to grow over the coming year. (This money will be reinvested into the annuity, but it is still considered actual income.)

(6) The imputed income from the asset is calculated only after the cash value of all family assets has been determined.

imputed income from assets is calculated on the total cash value of all family assets.

3. Lump sum receipts counted as assets.

a. Commonly, when a family receives a large amount of money, a lump sum payment, the family will put the money in a checking or savings account, or will purchase stocks or bonds or a CD. Owners must count lump sum payments received by a tenant as assets. Examples of lump sum payments include the following:

(1) Inheritances;

(2) Capital gains;

(3) Lottery winnings paid in one payment;

(4) Cash from the sale of assets;

(5) Insurance settlements (including health and accident insurance, workers compensation, and personal and property losses); and

(6) Any other amounts that are received in one-time lump sum payments.

Example – Calculating the Cash Value of an Annuity

Rodrigo Ramirez, site manager at Fernwood Forrest, has interviewed Barbara Barstow, an applicant who reports holding an annuity from which she will not receive payments for another 15 years when she turns 65. The applicant could not provide any more detail on the annuity but did report the name, address, and phone number of her insurance agent.

Rodrigo called the insurance agent and faxed a copy of the applicant's approval for release of information. As a result, Rodrigo learned that the annuity is a fixed annuity, with a current value of $20,400 earning interest at an annual rate of 4.5%. The applicant could withdraw the current balance in the account but would pay a surrender penalty of $3,000. If the annuity is withdrawn, then the applicant will owe $1,200 in tax penalties.

In this example, the important information for calculating cash value is the current value, $20,400; the surrender fee, $3,000; and the tax penalties, $1,200. If the applicant withdrew the cash from the annuity, after paying the surrender fee and tax penalty, then the amount of cash received would be $16,200.

The cash value, $16,200, is recorded as an asset.

Rodrigo will also calculate the actual anticipated income on this asset: $20,400 x .045 = $918.

b. A lump sum payment is counted as an asset only as long as the family continues to possess it. If the family uses the money for something that is not an asset—a car or a vacation or education—the lump sum must not be counted.

c. It is possible that a lump sum or an asset purchased with a lump sum payment may result in enough income to require the family to report the increased income before the next regularly scheduled annual recertification. But this requirement to report an increase in income before the next annual recertification would not apply if the income from the asset was not measurable by the tenant (e.g., gems, stamp collection).

Examples – Lump Sum Additions to Family Assets (One-Time Payment)

- JoAnne Wettig won $500 in the lottery and received it in one payment. Do not count the $500 as income. At JoAnne's next annual recertification, she will report all of her assets.

- Mia LaRue, a tenant in a Section 8 property, won $75,000 in one payment in the lottery. She buys a car with some of the money, and puts the remaining amount of $24,000 in the bank. Mia receives her first bank statement and notices that the income on this asset is $205 per month. She must report this increase in income because the family has experienced a cumulative increase in income of more than $200 per month. (See paragraph 7-10 A.4 on rules for reporting interim increases in income.) The owner must perform an interim recertification and count the greater of the actual or imputed income on this asset (since the net family assets are greater than $5,000).

4. Balances held in retirement accounts.

a. Balances held in retirement accounts are counted as assets if the money is accessible to the family member. For individuals still employed, accessible amounts are counted even if withdrawal would result in a penalty. However, amounts that would be accessible only if the person retired are not counted.

b. IRA, Keogh, and similar retirement savings accounts are counted as assets, even though withdrawal would result in a penalty.

c. Include contributions to company retirement/pension funds:

(1) While an individual is employed, count only amounts the family can withdraw without retiring or terminating employment.

(2) After retiring or terminating employment, count as an asset any amount the employee elects to receive as a lump sum.

d. Include in *annual income* any retirement benefits received through periodic payments.

Examples – Balances Held in an IRA or 401K Retirement Account

- Jed Dozier's 401K account balance is $35,000. He is able to terminate his participation in the retirement plan without quitting his job, but if he did so he would lose a part of his employer's contribution and would pay a penalty fee. The total cash he could withdraw, $18,000, is the amount that is counted as an asset.

5. *Federal Government/Uniformed Services Pensions

In instances where the applicant/tenant is a retired Federal Government/Uniformed Services employee receiving a pension that is* determined by a state court in a divorce, annulment of marriage, or legal separation proceeding to be a marital asset and the court provides OPM with the appropriate instructions to authorize OPM to provide payment of a portion of the retiree's pension to a former spouse, that portion to be paid directly to the former spouse is not counted as income for the applicant/tenant. However, where the tenant/applicant is the former spouse of a retired Federal Government/Uniformed Services employee, any amounts received pursuant to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation are reflected on a Form-1099 and is counted as income for the applicant/tenant. (See Paragraph 5-6.K.4 for more information on Federal Government/Uniformed Services pension funds paid to a former spouse.)

6. *Other state, local government, social security or private pensions.

Other state, local government, social security or private pensions where pensions are reduced due to a court ordered settlement in connection with a divorce, annulment of marriage, or legal separation and paid directly to the former spouse are not counted as income for the applicant/tenant and should be handled in the same manner as 5, above.*

7. Mortgage or deed of trust.

a. Occasionally, when an individual sells a piece of real estate, the seller may loan money to the purchaser through a mortgage or deed of trust. This may be referred to as a "contract sale."

b. A mortgage or deed of trust held by a family member is included as an asset. Payments on this type of asset are often received as one combined payment that includes interest and principal. The value of the asset is the unpaid principal as of the effective date of the certification. Each year this balance will decline as more principal is paid off. The interest portion of the payment is counted as actual income from an asset.

8. Assets disposed of for less than fair market value. Applicants and tenants must declare whether an asset has been disposed of for less than fair market value at each certification and recertification. Owners must count assets disposed of for less than fair market value during the two years preceding certification or recertification. The amount counted as an asset is the difference between the cash value and the amount actually received. (This provision does not apply to families receiving only BMIR assistance.)

   a. Any asset that is disposed of for less than its full value is counted, including cash gifts as well as property. To determine the amount that has been given away, owners must compare the cash value of the asset to any amount received in compensation.

   b. However, the rule applies only when the fair market value of all assets given away during the past two years exceeds the gross amount received by more than $1,000.

Examples – Assets of More or Less Than $1,000 Disposed of for Less Than Fair Market Value

- During the past two years, Alexis Turner donated $300 to the local food bank, $150 to a camp program, and $200 to her church. The total amount she disposed of for less than fair market value is $650. Since the total is less than $1,000, the donations are not treated as assets disposed of for less than fair market value.
- Jackson Jones gave each of his three children $500. Because the total exceeds $1,000, the gifts are treated as assets disposed of for less than fair market value.

   c. When the two-year period expires, the income assigned to the disposed asset also expires. If the two-year period ends in the middle of a recertification year, the tenant may request an interim recertification to remove the disposed asset(s). * However, if the owner elects to only include the income for a partial remaining year as shown in the example below, an interim recertification should not be conducted.*

Example – Asset Disposed of for Less Than Fair Market Value

Margot Lundberg's recertification will be effective January 1. On that date, it will be 18 months since she sold her house to her daughter for $60,000 less than its value. The owner will count income on the $60,000 for only six months. (After six months, the two-year limit on assets disposed of for less than fair market value will have expired.)

d. Assets disposed of for less than fair market value as a result of foreclosure, bankruptcy, divorce, or separation are *not* counted.

e. Assets placed in nonrevocable trusts are considered as assets disposed of for less than fair market value except when the assets placed in trust were received through settlements or judgements.

f. Applicants and tenants must sign a self-verification form at their initial certification and each annual recertification identifying all assets that have been disposed of for less than fair market value or certifying that no assets have been disposed of for less than fair market value.

g. Owners need to verify the tenant self certification only if the information does not appear to agree with other information reported by the tenant/applicant.

Examples – Asset Disposed of for Less Than Market Value

(1) An applicant "sold" her home to her daughter for $10,000. The home was valued at $89,000 and had no loans secured against it. Broker fees and settlement costs are estimated at $1,800.

$89,000	Market value
- 1,800	Fees
$87,200	Cash value
- 10,000	Sales price to daughter
$77,200	Asset disposed of for less than fair market value

In this example, the asset disposed of for less than fair market value is $77,200. That amount is counted as the resident's asset for two years from the date the sale took place.

(The $10,000 received from the daughter may currently be in a savings account or other asset or may have been spent. The $10,000 will be counted as an asset if the applicant has not spent the money.)

(2) A resident contributed $10,000 to her grandson's college tuition and gave her two granddaughters $4,000 each to save for college.

$10,000	College tuition gift
+ 8,000	Gift to granddaughters
$18,000	Asset disposed of for less than fair market value

The $18,000 disposed of for less than fair market value is counted as the tenant's asset for two years from the date each asset was given away.

Section 2: Determining Adjusted Income

Section 2 does not apply to families applying for or occupying 221(d)(3) BMIR units without additional subsidy.

5-8 Key Regulations

This paragraph identifies the key regulatory citation pertaining to Section 2: Determining Adjusted Income. The citation and its topic are listed below.

- 24 CFR 5.611 Adjusted Income

5-9 Key Requirements for Determining Adjusted Income

A. There are five possible deductions that may be subtracted from annual income based on allowable family expenses and family characteristics. The remainder, after these deductions are subtracted, is called adjusted income. Adjusted income is generally the amount upon which rent is based. See Section 4 of this chapter for information about specific rent calculation methods. This section focuses on the calculation of annual adjusted income. Before rent is calculated, annual adjusted income is converted to monthly adjusted income.

B. Of the five possible deductions, three are available to any assisted family, and two are permitted only for elderly or disabled families.

1. The three types of deductions available to any assisted family are:

   a. A deduction for dependents;

   b. A child care deduction; and

   c. A disability assistance deduction.

2. The two types of deductions permitted only for families in which the head, spouse, or co-head is elderly or disabled are:

   a. An elderly/disabled family deduction; and

   b. A deduction for unreimbursed medical expenses.

   NOTE: A family may not designate a family member as head or co-head solely to become eligible for these additional benefits. The remaining member of a family listed in paragraph 5-9 B.2 who is not 62 or older or a person with disabilities is not eligible for these allowances.

5-10 Calculating Adjusted Income

A. Dependent Deduction

1. A family receives a deduction of $480 for each family member who is:

   a. Under 18 years of age;

   b. A person with disabilities; or

   c. A full-time student of any age.

2. Some family members may never qualify as dependents regardless of age, disability, or student status.

   a. The head of the family, the spouse, and the co-head may never qualify as dependents.

   b. A foster child, an unborn child, a child who has not yet joined the family, or a live-in aide may never be counted as a dependent.

3. A full-time student is one who is carrying a full-time subject load at an institution with a degree or certificate program. A full-time load is defined by the institution where the student is enrolled.

4. When more than one family shares custody of a child and both live in assisted housing, only one family at a time can claim the dependent deduction for that child. The family with primary custody or with custody at the time of the initial certification or annual recertification receives the deduction. If there is a dispute about which family should claim the dependent deduction, the **owner** should refer to available documents such as copies of court orders or an IRS return showing which family has claimed the child for income tax purposes.

B. **Child Care Deduction**

1. Anticipated expenses for the care of children under age 13 (including foster children) may be deducted from annual income if all of the following are true:

   a. The care is necessary to enable a family member to work, seek employment, or further his/her education (academic or vocational).

   b. The family has determined there is no adult family member capable of providing care during the hours care is needed.

   c. The expenses are not paid to a family member living in the unit.

   d. The amount deducted reflects reasonable charges for child care.

   e. The expense is not reimbursed by an agency or individual outside the family.

   f. Child care expenses incurred to permit a family member to work must not exceed the amount earned by the family member made available to work during the hours for which child care is paid.

2. When child care enables a family member to work or go to school, the rule limiting the deduction to the amount earned by the family member made available to work applies only to child care expenses incurred while the individual is at work. The expense for child care while that family member is at school or looking for work is not limited.

Example – Child Care Deduction
Separate Expenses for Time at Work and Time at School

Bernice and Ernest have two children. Both parents work, but Bernice works only part-time and goes to school half time. She pays $4.00 an hour for eight hours of child care a day. For four of those hours, she is at work; for four of them she attends school. She receives no reimbursement for her child care expense.

Her annual expense for child care during the hours she works is $4,000. Her annual expense for the hours she is at school is also $4,000. She earns $6,000 a year. Ernest earns $18,000.

The rule requires that Bernice's child care expense while she is working not exceed the amount she is earning while at work. In this case, that is not a problem. Bernice earns $6,000 during the time she is paying $4,000. Therefore, her deduction for the hours while she is working is $4,000.

Bernice's expense while she is at school is not compared to her earnings. Her expense during those hours is $4,000, and her deduction for those hours will also be $4,000.

Bernice's total child care deduction is $8,000 ($4,000 + $4,000). The total deduction exceeds the amount of Bernice's total earnings, but the amount she pays during the hours she works does not exceed her earnings.

If Bernice's child care costs for the hours while she works were greater than her earnings, she would not be able to deduct all of her child care costs.

Bernice is paying a total of $8,000 in child care expenses. Of that expense, payments of $4,000 cover the hours while she is in school; payments of $4,000 cover the hours she works. If Bernice were earning $3,500, her total child care deduction for the hours she works would be capped at the amount of money she earns. In this case, the total deduction would be $7,500 ($4,000 for expenses while she is in school plus $3,500 of the amount she pays while she is working.)

3. Child care attributable to the work of a full-time student (except for head, spouse, co-head) is limited to not more than $480, since the employment income of full-time students in excess of $480 is not counted in the annual income calculation. Child care payments on behalf of a minor who is not living in the applicant's household cannot be deducted.

4. Child care expenses incurred by two assisted households with split custody can be split between the two households when the custody and expense is documented for each household and the documentation demonstrates that the total expense claimed by the two households does not exceed the cost for the actual time the child spends in care.

C. Deduction for Disability Assistance Expense

1. Families are entitled to a deduction for unreimbursed, anticipated costs for attendant care and "auxiliary apparatus" for each family member who is a person with disabilities, to the extent these expenses are reasonable and necessary to enable any family member 18 years of age or older who may or may not be the member who is a person with disabilities to be employed.

Examples – Eligible Disability Assistance Expenses

The payments made on a motorized wheelchair for the 42-year-old son of the head of the family enable the son to leave the house and go to work each day on his own. Prior to the purchase of the motorized wheelchair, the son was unable to make the commute to work. These payments are an eligible disability assistance expense.

Payments to a care attendant to stay with a disabled 16-year-old child allow the child's mother to go to work every day. These payments are an eligible disability assistance expense.

2. This deduction is equal to the amount by which the cost of the care attendant or auxiliary apparatus exceeds 3% of the family's annual income. However, the deduction may not exceed the earned income received by the family member or members who are enabled to work by the attendant care or auxiliary apparatus.

3. If the disability assistance enables more than one person to be employed, the owner must consider the combined incomes of those persons. For example, if an auxiliary apparatus enables a person with a disability to be employed and frees another person to be employed, the allowance cannot exceed the combined incomes of those two people.

Example – Calculating a Deduction for Disability Assistance Expenses

Head's earned income	$14,500
Spouse's earned income	+$12,700
Total income	$27,200
Care expenses for disabled 15-year-old	$3,850
Calculation:	$3,850
(3% of annual income)	- $816
Allowable disability assistance expenses	$3,034

(**NOTE:** $3,034 is not greater than amount earned by spouse, who is enabled to work.)

4. Auxiliary apparatus includes items such as wheelchairs, ramps, adaptations to vehicles, or special equipment to enable a sight-impaired person to read or type, but only if these items are directly related to permitting the disabled person or other family member to work.

   a. Include payments on a specially-equipped van to the extent they exceed the payments that would be required on a car purchased for transportation of a person who does not have a disability.

   b. The cost of maintenance and upkeep of an auxiliary apparatus is considered a disability assistance expense (e.g., the veterinarian costs and food costs of a service animal; the cost of maintaining the equipment that is added to a car, but not the cost of maintaining the car).

   c. If the apparatus is <u>not</u> used exclusively by the person with a disability, the owner must prorate the total cost and allow a specific amount for disability assistance.

5. In addition to anticipated, ongoing expenses, one-time nonrecurring expenses of a current resident for auxiliary apparatus may be included in the calculation of the disability assistance expense deduction after the expense is incurred. These expenses may be added to the family's total disability assistance expense either at the time the expense occurs through an interim recertification or in the rent calculation during the following annual recertification.

6. Attendant care includes but is not limited to reasonable expenses for home medical care, nursing services, housekeeping and errand services, interpreters for hearing-impaired, and readers for persons with visual disabilities.

Example – Calculating a Deduction When Disability Assistance Expenses Exceed Related Earnings

Kenisha Prior, an individual with disabilities, lives with her mother Grace Prior. Her mother works full time. Kenisha works part time at the library. She requires a motorized wheelchair and special transportation to get to her job.

Grace Prior's Income	$24,000
Kenisha Prior's Income	+ 5,000
Total income	$29,000
Disability Assistance Expense	$8,000
(3% of annual income)	- $870
	$7,130

The $7,130 exceeds the amount Kenisha earns. The disability assistance deduction, therefore, is limited to the amount earned by the person made available to work or, in this case, $5,000.

7. When the same provider takes care of children and a disabled person over age 12, the owner must prorate the total cost and allocate a specific cost to attendant care. The sum of both child care and disability assistance expenses cannot exceed the employment income of the family member enabled to work.

Example – Calculating Child Care and Disability Assistance Deductions

Head's earned income	$8,300
Spouse's earned income	+ $6,700
Total income	$15,000

The family has two children: a 10-year-old son and a 15-year-old son who is disabled. One care provider, who charges $120 per week, cares for both sons. The care provider reports that the cost for caring for the 10-year-old is $50 a week and the cost of care for the child with disabilities is $70 a week.

Child care expense	$50 x 52 = $2,600
Total disability assistance expense	$70 x 52 = $3,640

Total disability assistance expense ($3,640) less 3% of annual income ($450) = $3,190

Child care deduction	$2,600
Disability assistance deduction	+$3,190
Total deductions	$5,790

Total deductions when compared to earnings must not exceed employment earnings of $6,700.

D. Medical Expense Deduction

1. The medical expense deduction is permitted only for families in which the head, spouse, or co-head is at least 62 years old or is a person with disabilities (elderly or disabled families).

2. If the family is eligible for a medical expense deduction, owners must include the unreimbursed medical expenses of all family members, including the expenses of nonelderly adults or children living in the family.

3. Medical expenses include all expenses the family anticipates to incur during the 12 months following certification/recertification that are not reimbursed by an outside source, such as insurance.

4. The owner may use the ongoing expenses the family paid in the 12 months preceding the certification/recertification to estimate anticipated medical expenses.

5. The medical expense deduction is that portion of total medical expenses that exceeds 3% of annual income.

Example – Calculating the Medical Expense Deduction

Age of head	64	Annual income	$12,000
Age of spouse	58	Total medical expenses	$1,500
		Sample Calculation	
		Annual income	$12,000
			x .03
		3% of annual income	$ 360
		Total medical expenses	$1,500
			- $360
		Allowable medical expenses	$ 1,140

6. In addition to anticipated expenses, past one-time nonrecurring medical expenses that have been paid in full may be included in the calculation of the medical expense deduction **for current tenants at an initial, interim or annual recertification. Past one-time nonrecurring medical expenses that have been paid in full are not applicable when calculating anticipated medical expenses at move-in.** If the tenant is under a payment plan, the expense would be counted as anticipated

   a. There are two options for addressing one-time medical expenses. These expenses may be added to the family's total medical expenses either: (1) at the time the expense occurs, through an interim recertification, or (2) at the upcoming annual recertification

      NOTE: If the one-time expense is added at an interim recertification, it cannot be added to expenses at the annual recertification.

b. The following example illustrates the two options. Tenants may use either option.

The following example illustrates the two options. Tenants may use either option.Example – One-Time, Nonrecurring Medical Expenses

Maria and Gustav Crumpler had a total of $2,932 in medical expenses last year (Year 1). Of this amount, $932 covered Gustav's gall bladder surgery; $2,000 was for routine costs that are expected to re-occur in the coming year. The entire amount may be included in the Crumpler's medical costs for the coming year (Year 2) despite the fact that the gall bladder surgery is a past event that is not likely to re-occur.

If, during the coming year (Year 2), the Crumplers experience additional one-time medical costs not anticipated at the annual recertification, they may request an interim recertification or wait for their next annual recertification (during Year 3) and ask for the unanticipated expenses to be included in the medical expense calculation for the following year.

The owner may wish to explain to residents that including past one-time medical expenses in an annual recertification rather than in an interim recertification will result in a rent reduction for a larger number of months.

For example, let us assume Maria has unanticipated dental surgery during Year 2 at a cost of $3,550 six months after the annual recertification. The Crumpler's current TTP is $560; their annual income is $25,000.

Annual income	$25,000
Less elderly household deduction	- $400
Less allowable medical deduction ($2,932 less 3% of $25,000)	- $2,182
Adjusted annual income	$22,418
Adjusted monthly income	$1,868
TTP	$560

If the Crumplers request an interim recertification, the $3,550 additional cost will lower their rent for 6 months; if they wait for their annual recertification, the cost of the dental surgery will affect their rent for 12 months.

Annual income	$25,000
Less elderly household deduction	- $400
Less allowable medical deduction* ($6,482 less 3% of $25,000)	- $5,732
Adjusted annual income	$18,868
Adjusted monthly income	$1,572
TTP	$472

At the Crumplers' current annual income, the large dental bill reduces rent by $88.

OPTION #1: If the Year 2 rent is adjusted through an interim recertification, the Crumplers will save 6 months times $88 or $528.

OPTION #2: If the Crumplers wait until their annual recertification, the large bill will affect their rent for the 12 months of Year 3, and they will save twice as much, or $1,056.

7. When a family is making regular payments over time on a bill for a past one-time medical expense, those payments are included in anticipated medical expenses. However, if a family has received a deduction for the full amount of a medical bill it is paying over time, the family cannot continue to count that bill even if the bill has not yet been paid.

Example – Medical Expense Paid over a Period of Time

Ursula and Sebastian Grant did not have insurance to cover Sebastian's operation four years ago. They have been paying $105 a month toward the $5,040 debt. Each year that amount ($105 x 12 months or $1,260) has been included in their total medical expenses. A review of their file indicates that a total of $5,040 has been added to total medical expenses over the four-year period. However, the Grants bring a current invoice to their annual recertification interview. Over the four-year period they have missed five payments and still owe $525. Although they still owe this amount, the bill cannot be included in their current medical expenses because the expense has already been deducted.

8. Not all elderly or disabled applicants or participants are aware that their unreimbursed expenses for medical care are included in the calculation of adjusted income for elderly or disabled families. For that reason, it is important for owners to ask enough questions to obtain complete information about allowable medical expenses. The following list highlights some of the most common expenses that may be deducted. A list of examples of eligible medical expenses may be found in Exhibit 5-3.

   a. Services of doctors and health care professionals;

   b. Services of health care facilities;

   c. Medical insurance premiums or costs of an HMO;

   d. Prescription/nonprescription medicines that have been prescribed by a physician;

   e. Transportation to treatment;

   f. Dental expenses;

   g. Eyeglasses, hearing aids, batteries;

   h. Live-in or periodic medical assistance such as nursing services, or costs for an assistance animal and its upkeep;

   i. Monthly payments on accumulated medical bills;

   j. Medical care of a permanently institutionalized family member *if* his or her income is included in annual income; and

k. Long-term care insurance premiums. The family member paying a long-term care insurance premium must sign a certification (**see Sample Certification for Qualified Long-Term Care Insurance Expenses in Exhibit 5-4**) that states the insurance is guaranteed renewable, does not provide a cash surrender value, will not cover expenses covered under Medicare, and restricts the use of refunds. The certification must be maintained in the family's occupancy file. (Paragraph 5-6 J.3 describes situations in which long-term care insurance payments must be included in annual income.)

9. Special calculation for families eligible for disability assistance and medical expense deductions. If an elderly family has both unreimbursed medical expenses and disability assistance expenses, a special calculation is required to ensure that the family's 3% of income expenditure is applied only one time. Because the deduction for disability assistance expenses is limited by the amount earned by the person enabled to work, the disability deduction must be calculated before the medical deduction is calculated.

   a. When a family has unreimbursed disability assistance expenses that are less than 3% of annual income, the family will receive no deduction for disability assistance expense. However, the deduction for medical expenses will be equal to the amount by which the sum of both disability and medical expenses exceeds 3% of annual income.

   b. If the disability assistance expense exceeds the amount earned by the person who was enabled to work, the deduction for disability assistance will be capped at the amount earned by that individual. When the family is also eligible for a medical expense deduction, however, the 3% may have been exhausted in the first calculation, and it then will not be applied to medical expenses.

   c. When a family has both disability assistance expenses and medical expenses, it is important to review the collected expenses to be sure no expense has been inadvertently included in both categories.

E. Elderly Family Deduction

An elderly or disabled family is any family in which the head, spouse, or co-head (or the sole member) is at least 62 years of age or a person with disabilities. Each elderly or disabled family receives a $400 family deduction. Because this is a "family deduction" each family receives only one deduction, even if both the head and spouse are elderly or disabled.

Example – Special Calculation for Families Who Are Eligible for Disability Assistance and Medical Expense Deductions

The following is basic information on the family:

Head (retired/disabled)—SS/pension income	$16,000
Spouse (employed)—employment income	+ $4,000
Total Annual Income	$20,000
Total disability assistance expenses	$500
Total medical expenses	$1,000

Step 1: Determine if the disability assistance expenses exceed 3% of the family's total annual income.

Total disability assistance expenses	$500
Minus 3% of total annual income	-$600
	($100)

No portion of the disability expenses exceeds 3% of the annual income; therefore, the disability assistance deduction is $0.

Step 2: Calculate if the medical expenses exceed the balance of 3% of the family's total annual income.

Total medical expenses	$1,000
Minus the balance of 3% of total annual income	- $100
Allowable medical expenses deduction	$900

F. No Deduction for Alimony or Child Support Paid to a Person outside the Assisted Family

There is no deduction for an amount paid to a person outside the assisted family for alimony or child support. Even if the amount is garnished from the wages of a family member, it must be included in annual income.

Example – Child Support Garnished from Wages

George Graevette pays $150 per month in child support. It is garnished from his monthly wages of $950. After the child support is deducted from his salary, he receives $800. The owner must count $950 as George's monthly income.

Section 3: Verification

5-11 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 3: Verification. The citations and their titles (or topics) are listed below.

A. 24 CFR part 5, subpart B – Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information

B. 24 CFR 5.659 Family Information and Verification

C. 24 CFR 8.24, 8.32, 100.204 (Reasonable accommodation)

5-12 Verification Requirements

A. Key Requirements

1. Owners must verify all income, assets, expenses, deductions, family characteristics, and circumstances that affect family eligibility or level of assistance.

2. Applicants and adult family members must sign consent forms to authorize the owner to collect information to verify eligibility, income, assets, expenses, and deductions. Applicants and tenants who do not sign required consent forms will not receive assistance.

3. Family members 6 years of age and older must provide the owner with a complete and accurate social security number. For any members of the family who do not have a social security number, the applicant or family member must certify that the individual has never received a social security number. This requirement is described in paragraphs 3-9 and 3-**31** of this handbook.

4. The owner must handle any information obtained to verify eligibility or income in accordance with the Privacy Act.

Figure 5-4: Privacy Act Notice

The Department of Housing and Urban Development (HUD) is authorized to collect this information by the U.S. Housing Act of 1937 (42 U.S.C. 1437 et. seq.), by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), and by the Fair Housing Act (42 U.S.C. 3601-19). The Housing and Community Development Act of 1987 (42 U.S.C. 3543) requires applicants and participants to submit the social security number of each household member who is 6 years old or older.

Purpose: Your income and other information are being collected by HUD to determine your eligibility, the appropriate bedroom size, and the amount your family will pay toward rent and utilities.

Other Uses: HUD uses your family income and other information to assist in managing and monitoring HUD-assisted housing programs, to protect the Government's financial interest, and to verify the accuracy of the information you provide. This information may be released to appropriate federal, state, and local agencies, when relevant, and to civil, criminal, or regulatory investigators and prosecutors. However, the information will not be otherwise disclosed or released outside of HUD, except as permitted or required by law.

Penalty: You must provide all of the information requested by the owner, including all social security numbers you, and all other household members age 6 years and older, have and use. Giving the social security numbers of all household members 6 years of age and older is mandatory, and not providing the social security numbers will affect your eligibility. Failure to provide any of the requested information may result in a delay or rejection of your eligibility approval.

B. Timeframe for Conducting Verifications

Owners conduct verifications at the following three times.

1. Owners must verify income, assets, expenses, and deductions and all eligibility requirements prior to move-in.

2. Owners must verify each family's income, assets, expenses, and deductions as part of the annual recertification process. Refer to Chapter 7, Section 1 for information on annual recertifications.

3. Owners must verify changes in income, allowances, or family characteristics reported between annual recertifications. Refer to Chapter 7, Section 2 for information on interim recertifications.

5-13 Acceptable Verification Methods

A. Methods of Verification

Owners must use verification methods that are acceptable to HUD. The owner is responsible for determining if the verification documentation is adequate and credible. HUD accepts three methods of verification. These are, in order of acceptability, third-party verification, review of documents, and family certification. If third-party verification is not available, owners must document the tenant file to explain why third-party verification was not available. **Appendix 3** provides a detailed list of acceptable forms of verification by type of information.

B. Third-Party Verification

The following describes ways in which third-party verification may be obtained.

1. Written. Written documentation sent directly by a third-party source is the preferred method of verification. It is assumed that third-party sources will send written verification to the owner through the mail. (For information about electronic documentation, see subparagraph B3 below.)

   The applicant or tenant should not hand-carry the verification to or from the third-party source. If the verification does not contain an original signature or is delivered by the applicant or tenant, the owner should examine the document for evidence of tampering. In these situations, the owner may, but does not have to, accept the document as acceptable verification.

2. Oral. Oral verification, by telephone, from a reliable third-party source is an acceptable verification method. Owners frequently use this method when the third party does not respond to the written verification request. When verifying information over the telephone, it is important to be certain that the person on the telephone is the party he or she claims to be. Generally, it is best to telephone the verification source rather than to accept verification from a source calling the property management office. Oral verification must be documented in the file, as described in paragraph 5-19 C.

   NOTE: Appendix 3 includes selected phone numbers of verification sources for employment and income records. However, they do not take the place of third party verification. The phone numbers contained in **Appendix 3** are not toll free but such calls are valid project expenses.

3. Electronic. The owner may obtain accurate third-party written verification by facsimile, e-mail, or Internet, if adequate effort is made to ensure that the sender is a valid third-party source.

a. Facsimile. Information sent by fax is most reliable if the owner and the verification source agree to use this method in advance during a telephone conversation. The fax should include the company name and fax number of the verification source.

b. E-mail. Similar to faxed information, information verified by e-mail is more reliable when preceded by a telephone conversation and/or when the e-mail address includes the name of an appropriate individual and firm.

c. Internet. Information verified on the Internet is considered third party verification if the owner is able to view web-based information from a reputable source on the computer screen. Use of a printout from the Internet may also be adequate verification in many instances. Refer to subparagraph C. Review of Documents below.

Example – Verification by Internet Printout

Jose Perez maintains a portfolio of stocks and bonds through an Internet-based stockbroker. The broker only provides electronic account statements and will not respond to a written verification request. The owner may accept a printout of Jose's most recent statement if it includes the relevant information required for a third-party verification and an Internet address and header or footer that identifies the company issuing the statement. If the owner has reason to question the authenticity of a document, the owner may require Jose to access the electronic file via the Internet in the owner's office, without providing the owner with username or password information.

C. Review of Documents

1. An owner may review documents submitted by the applicant or tenant in one of the following situations:

   a. Third-party verification is not possible or is not required. For example, verifying that a family member is over 62 years old is more appropriately accomplished by examining a birth certificate than through third-party verification. **When third party verification is not possible, refer to paragraph 5-19 E for documenting the file.**

   b. Third-party verification is delayed. If information from a third party is not received within two weeks of its request, owners may consider original documents submitted by the tenant.**

Examples – Appropriate Occasions to Verify Information through a Review of Documents

- The owner sent a verification request to the tenant's employer but did not receive a response. The owner then made several calls to the employer but has not received a return call. The owner may use a review of documents (pay stubs) for verification. The owner should insist on a series of consecutive, recent pay stubs and should have a standard policy indicating the number of consecutive pay stubs required.
- The tenant's bank charges the bank account a fee for completing verification requests. The owner allows the resident to provide a current savings account statement or checking account statements for the past six months.
- The tenant's employer uses a 900 phone number, which results in a charge to the owner's phone to provide income verification. (In this case, the owner will accept the most recent consecutive eight pay stubs to verify earned income.)
- In cases where there is no third party available, a review of documents will always be appropriate. To verify a person's age, a birth certificate may be used. A social security card is the best verification of a social security number.

2. An owner must place copies of the reviewed documents in the applicant's or tenant's file. If copies cannot be made, the person reviewing the original documents must list the reviewed documents and the information provided on the documents, and must initial and date the notation.

3. Obtaining accurate verification through a review of documents requires the owner to consider the following:

   a. Is the document current? Documentation of public assistance may be inaccurate if it is not recent and does not show any changes in the family's benefits or work and training activities.

   b. Is the documentation complete? Owners may not accept pay stubs to document employment income unless the applicant or tenant provides the most recent **four to six** pay stubs to illustrate variations in hours worked. Actual paychecks or copies of paychecks should never be used to document income because deductions are not shown on the paycheck.

c. Is the document an unaltered original? The greatest shortcoming of documents as a verification source is their susceptibility to undetectable change through the use of high-quality copying equipment. Documents with original signatures are the most reliable. Photocopied documents generally cannot be assumed to be reliable.

D. **Family Certification**

An owner may accept a tenant's notarized statement or signed affidavit regarding the veracity of information submitted if the information cannot be verified by another acceptable verification method.

5-14 Identifying Appropriate Verification Sources

An owner must only collect information that is necessary to determine the applicant's or tenant's eligibility for assistance or level of assistance. **Appendix 3** provides a list of acceptable forms of third-party verification.

5-15 Required Verification and Consent Forms

A. **Consent and Verification Forms**

Adult members of assisted families must authorize owners to request independent verification of data required for program participation. To provide owners with this authorization, adult family members must sign two HUD-required consent forms plus the owner's specialized verification forms. Owners must create their own verification forms to request information from employers, child care providers, medical professionals, and others. Families sign these and the two HUD consent forms at the time of move-in certification and annual recertification. All adults in each assisted family must sign the required consent forms or the family must be denied assistance. Owners must give the family a copy of each form the family signed, a HUD Fact Sheet, and the Resident Rights and Responsibilities brochure.

B. **HUD-Required Consent and Release Forms**

Applicants and tenants must sign two HUD-required consent forms.

1. Form HUD-9887, *Notice and Consent to the Release of Information to HUD and to a PHA*. Each adult member must sign the form regardless of whether he or she has income. *Each family member who is at least 18 years of age and the head, spouse or co-head, regardless of age, must sign this form at move-in, initial and at each annual recertification. The form must also be signed when a new adult member joins the household.* The form is valid for 15 months from the date of signature. The consent allows HUD or a public housing agency to verify information with the Internal Revenue Service, the Social Security Administration, and with state agencies that maintain wage and unem,ployment claim information. Owners must keep the original signed form in the tenant's

file and provide a copy to the family. Exhibit 5-5 contains a copy of form HUD-9887.

2. Form HUD 9887-A, *Applicant's/Tenant's Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*. Owners and the head of household, spouse, co-head and each family member who is at least 18 years of age must sign **a HUD-9887-A** form **at move-in and at each annual recertification**. Each adult member must sign a form regardless of whether he or she has income. The consent allows owners to request and receive information from third-party sources about the applicant or tenant. Owners keep the original form in the tenant's file and provide a copy to the family. Exhibit 5-6 contains a copy of form HUD 9887-A.

C. Information to Tenants

Owners must provide applicants and tenants with the HUD Fact Sheet and a copy of the Resident Rights and Responsibilities brochure.

1. HUD-9887 Fact Sheet. When applicants and tenants sign form HUD-9887 and form HUD 9887-A, owners must provide each family with a copy of the HUD Fact Sheet. This Fact Sheet describes the verification requirements for applicants and tenants and the tenant protections that are part of the verification process. Exhibit 5-7 contains a copy of the HUD Fact Sheet.

2. Resident Rights and Responsibilities Brochure. In addition, owners must provide applicants and tenants with a copy of the Resident Rights and Responsibilities brochure at move-in and annually at recertification. Copies of the brochure may be obtained by calling the HUD National Multifamily Clearinghouse at 800-685-8470.

D. Owner-Created Verification Forms

1. Owners must create verification forms for specific verification needs and must include the language required by HUD as shown in Figure 5-5. **Appendix **6**** contains instructions, a sample verification consent, and guidance about the types of information to request when verifying income and eligibility.

2. It is important that the applicant or tenant know whom owners will ask to provide information and to whom the completed form will be returned. Therefore, verification forms must clearly state in a prominent location that the applicant or tenant may not sign the consent if the form does not clearly indicate who will provide the requested information and who will receive the information. When sending a request for verification to a third party, owners send the verification form with the applicant's or tenant's original signature to the third-party source. Owners must retain a copy of the verification form and provide a copy to the applicant or tenant upon request.

Figure 5-5: Language Required in all Consent Forms

The following statement must appear on all consent forms developed by owners:

"Title 18, Section 1001 of the U.S. Code states that a person is guilty of a felony for knowingly and willingly making false or fraudulent statements to any department of the United States Government. HUD and any owner (or any employee of HUD or the owner) may be subject to penalties for unauthorized disclosures or improper use of information collected based on the consent form. Use of the information collected based on this verification form is restricted to the purposes cited above. Any person who knowingly or willingly requests, obtains or discloses any information under false pretenses concerning an applicant or participant may be subject to a misdemeanor and fined not more than $5,000. Any applicant or participant affected by negligent disclosure of information may bring civil action for damages, and seek other relief, as may be appropriate, against the officer or employee of HUD or the owner responsible for the unauthorized disclosure or improper use. Penalty provisions for misusing the social security number are contained in the **Social Security Act at 208 (a) (6), (7) and (8). Violation of these provisions are cited as violations of 42 U.S.C. 408 (a) (6), (7) and (8).**

5-16 Social Security and Supplemental Security Income Data Match

A. Owners verify social security income and supplemental security income electronically through TRACS. If there is a discrepancy between income reported by the tenant or applicant and income provided by the Social Security Administration (SSA), TRACS will automatically generate a message that is sent to the owner. The owner must attempt to contact the applicant or tenant to disclose the discrepancy. **

B. Additional information is available on HUD's website page describing the tenant assessment system (for tenant income verification) (TASS):

www.hud.gov/offices/reac/products/prodtass.cfm

TASS is a computer-based tool to assist owners in verifying tenant incomes by comparing tenant-reported information to information in other HUD systems from the Social Security Administration and the Internal Revenue Service.

5-17 Effective Term of Verifications

Signed verification and consent forms must be used within a reasonable time after the applicant or tenant has signed if the tenant's signature is to represent a valid and current authorization by the family. Therefore, HUD has set specific limits on the duration of verification consents. In addition, verified information must be used in a timely manner since family circumstances are subject to change. HUD places several other limits on the information that may be requested and when and how it may be used.

A. Duration of Verification Authorization

Owner-created verification forms and the forms HUD 9887 and 9887-A expire 15 months after they are signed. Owners must ensure that the forms HUD 9887 and 9887-A have not expired when processing verifications. However, there are differences between the duration of form HUD-9887 and that of the individual verification forms.

1. The form HUD 9887-A and individual verification forms can be used during the 120 days before the certification period. During the certification period, however, these forms may be used only in cases where the owner receives information indicating that the information the tenant has provided may be incorrect. Other uses are prohibited.

2. Owners may verify anticipated income using individual verification forms to gather prospective information when necessary (e.g., verifying seasonal employment). Historical information that owners may request using individual verification forms is restricted as follows:

   a. Information requested by individual verification forms is restricted to data that is no more than 12 months old.

   b. However, if the owner receives inconsistent information and has reason to believe that the information the applicant or tenant has supplied is incorrect, the owner may obtain information from any time in the last five years when the individual was receiving assistance, as provided by the form HUD 9887-A.

3. The form HUD-9887 may be used at any time during the entire 15 month period. The information covered by the form HUD-9887 is restricted as follows:

   a. State Wage Information Collection Agency (SWICA). Information received from SWICA is limited to wages and unemployment compensation the applicant or tenant received during the last five years she/he received housing assistance.

   b. Internal Revenue Service and Social Security Administration. form HUD-9887 authorizes release by IRS and SSA of data from only the current income tax return and IRS W-2 form.

      If the IRS or SSA matches reveal that the tenant may have supplied inconsistent information, HUD may request that the tenant consent to the owner acquiring information on the last five years during the periods in which the tenant was receiving assistance.

B. Effective Term of Verifications

1. Verifications are valid for **120** days from the date of receipt by the owner.

**

2. If verifications are more than 120 days old, the owner must obtain new verifications.

3. Time limits do not apply to information that does not need to be reverified, such as:

   a. Age;

   b. Disability status;

   c. Family membership; or

   d. Citizenship status.

4. Time limits also do not apply to the verification of social security numbers; however, at each recertification any family member who has previously reported having never received a social security number, must be asked:

   a. To supply verification of a social security number if one has been received; or

   b. To certify, again, that he/she has never received a social security number.

5-18 Inconsistent Information Obtained Through Verifications

An owner may not take any action to reduce, suspend, deny, or terminate assistance based on inconsistent information received during the verification process until the owner has independently investigated the information. The owner should follow procedures for addressing errors and fraud and for terminating assistance in accordance with Chapter 8.

5-19 Documenting Verifications

A. Key Requirement

Owners must include verification documentation in the tenant file.

B. Documenting Third-Party Verification

Third-party verification received through the mail or by facsimile transmission must be put in the tenant file.

C. Documenting Telephone Verification

When verifying information by phone, the owner must record and include in the tenant's file the following information:

1. Third-party's name, position, and contact information;

2. Information reported by the third party;

3. Name of the person who conducted the telephone interview; and

4. Date and time of the telephone call.

D. **Recording Inspection of Original Documents**

Original documents should be photocopied, and the photocopy should be placed in the tenant file. If the original document cannot be copied, a clear note to the file must describe the type of document, the information contained in the document, the name of the person who reviewed the document, and the date of that review.

NOTE: It is not mandatory that social security cards be copied. See **Appendix 3** for alternate methods.

E. **Documenting Why Third-Party Verification Is Not Available**

When third-party verification is not available, owners must document in the file efforts made to obtain the required verification and the reason the verification was not obtained. The owner must include the following documents in the applicant's or tenant's file:

1. A written note to the file explaining why third-party verification is not possible; or

2. A copy of the date-stamped original request that was sent to the third party;

3. Written notes or documentation indicating follow-up efforts to reach the third party to obtain verification; and

4. A written note to the file indicating that the request has been outstanding without a response from the third party.

F. **Reasonable Accommodation**

If an applicant or tenant cannot read or sign a consent form because of a disability, the owner must provide a reasonable accommodation. See Chapter 2, Section 3, Subsection 4 for a description of the requirements regarding reasonable accommodations.

Examples – Reasonable Accommodation

- Provide forms in large print.
- Provide readers for persons with visual disabilities.
- Allow the use of a designated signatory.

- Visit the person's home if the applicant or tenant cannot travel to the office to complete the forms.

5-20 Confidentiality of Applicant and Tenant Information

A. Federal law limits the information owners can collect about an applicant or tenant to only information that is necessary to determine eligibility and level of assistance.

B. Federal privacy requirements also establish the responsibility of owners and their employees to use information provided by applicants and tenants only for specified program purposes and to prevent the use or disclosure of this information for other purposes.

1. To help ensure the privacy of applicant and tenant information, owners and their employees are subject to penalties for unauthorized disclosure of applicant/tenant information. In addition, applicants and tenants may initiate civil action against an owner for unauthorized disclosure or improper use of the information they provided. Language on the HUD-required consent forms, the verification forms developed by owners, and the **HUD-50059** clearly describes owners' responsibility regarding the privacy of this information and the possible penalties.

2. HUD encourages owners to develop their own procedures and internal controls to prevent the improper use or unauthorized disclosure of information about applicants and tenants. Adequate procedures and controls protect not only applicants and tenants, but also owners.

C. Owners must also comply with state privacy laws concerning the information they receive from third-party sources about applicants and tenants. These laws generally require confidentiality and restrict the uses of this information.

5-21 Refusal to Sign Consent Forms

A. If an applicant refuses to sign forms HUD 9887 or 9887-A or the owner's verification forms, the owner must deny assistance.

B. If a tenant refuses to sign the required verification and consent forms, the owner must terminate assistance. If the owner intends to terminate assistance for this reason, the owner must follow procedures established in the lease that require the tenant to pay the HUD-approved market rent for the unit. In a Section 202 PRAC or Section 811 PRAC project, the tenant may be evicted if the tenant refuses to sign the required verification and consent forms.

C. If a tenant is unable to sign the forms on time due to extenuating circumstances, the owner must document the reasons for the delay in the tenant file and indicate how and when the tenant will provide the proper signature.

Examples – Tenant Failure to Sign Consent Forms Due to Extenuating Circumstances

- Jonas and Joycelyn Hardwick were to have forms HUD 9887 and 9887-A signed by their adult son. However, he was in an automobile accident and has been in a coma.
- Lydia Bailey's husband has been temporarily assigned to overseas duty as part of a missionary hunger-relief program. She has signed consent forms, and the forms have been mailed to him but have not been returned. She reports that mail has recently been taking five or six weeks.

5-22 Interim Recertifications

When processing an interim recertification, the owner must ask the tenant to identify all changes in income, expenses, or family composition since the last recertification. Owners only need verify those items that have changed. For example, if the head of household was laid off from his or her job and asks the owner to prepare an interim recertification, the owner does not need to reverify the spouse's employment income unless that has also changed. When the tenant signs the certification she or he certifies that the information on the report is accurate and current. Additional information about the procedures for conducting interim recertifications is discussed in Chapter 7, Section 2.

5-23 Record-Keeping Procedures

A. Owners must keep the following documents in the tenant's file at the project site:

1. All original, signed forms HUD 9887 and HUD 9887-A;
2. A copy of signed individual consent forms; and
3. Third-party verifications.

B. Owners must maintain documentation of all verification efforts throughout the term of each tenancy and for at least three years after the tenant moves out

C. **The tenant's file should be available for review by the tenant upon request or by a third party who provides signed authorization for access from the tenant.**

D. Owners must maintain applicant and tenant information in a way to ensure confidentiality. Any applicant or tenant affected by negligent disclosure or improper use of information may bring civil action for damages and seek other relief, as appropriate, against the employee. Forms HUD 9887 and 9887-A describe the penalties for the improper use of consent forms.

E. **Owners must dispose of tenant files and records in a manner that will prevent any unauthorized access to personal information, e.g., burn, pulverize, shred, etc.**

Section 4: Calculating Tenant Rent

5-24 Key Regulations

This paragraph identifies key regulatory citations pertaining to Section 4: Calculating Tenant Rent. The citations and their titles or (topics) are listed below.

A. 24 CFR 5.628 Total Tenant Payment

B. 24 CFR 5.630 Minimum Rent

C. 24 CFR 236.735 Rental Assistance Payments and Rental Charges

D. 24 CFR 891.105, 891.410, 891.520, 891.640, 891.655, 891.705 (Project rental assistance payment, project assistance payment, tenant rent, total tenant payment, and rent for unassisted units)

E. **24 CFR 5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project**

5-25 Calculating the Tenant Contribution for Section 8, PAC, PRAC, RAP, and Rent Supplement Properties

A. **Total Tenant Payment (TTP)**

The Total Tenant Payment (TTP) is the amount a tenant is expected to contribute for rent and utilities. TTP for Section 8, PAC, PRAC, RAP, and Rent Supplement properties is based on the family's income. The formulas for calculating TTP are shown in Figure 5-6. ** Exhibit 5-8** also shows the formulas for calculating tenant contributions for all assisted-housing programs.

B. **Unit Rent**

1. The contract rent (basic rent in the Section 236 program) represents the amount of rent an owner is entitled to collect to operate and maintain the property. It is HUD-approved. For Section 202 and 811 PRACS, the contract rent is the operating rent minus the utility allowance.

2. Projects in which the tenant pays all or some utilities have HUD-approved utility allowances that reflect an estimated average amount tenants will pay for utilities assuming normal consumption.

C. Timeframe for Calculating Rent

Owners calculate rent at three points in time.

1. Owners must calculate rent prior to occupancy by an applicant.

2. Owners must calculate rent as part of an annual recertification. Refer to Chapter 7, Section 1 for information on annual recertification of income.

3. When assistance is provided through Section 8, PAC, PRAC, RAP, or Rent Supplement, owners must recalculate rent if a tenant reports a change in income, allowances, or family composition. Refer to Chapter 7, Section 2 for information on interim recertifications of income.

Figure 5-6: Total Tenant Payment Formulas

Section 8, PAC, PRAC, and RAP

- TTP is the greater of the following:
  - 30% of monthly adjusted income;
  - 10% of monthly gross income;
  - Welfare rent (welfare recipients in as-paid localities only); or
  - The $25 minimum rent (Section 8 only).
- Section 8, RAP, and PAC programs may admit an applicant only if the TTP is less than the gross rent.
- In PRAC properties, the TTP may exceed the PRAC operating rent.

Rent Supplement

- TTP is the greater of the following:
  - 30% of monthly adjusted income; or
  - 30% of gross rent.
- At move-in or initial certification, the amount of Rent Supplement assistance may be no less than 10% of the gross rent or the tenant is not eligible.

5-26 Procedures for Determining Tenant Contribution for Section 8, PAC, PRAC, RAP, and Rent Supplement Properties

A. Tenant Rent

Tenant rent is the portion of the TTP the tenant pays each month to the owner for rent. Tenant rent is calculated by subtracting the utility allowance from the TTP.

It is possible for tenant rent to be $0 if the utility allowance is greater than the TTP. (See paragraph 9-13 for more information on utility reimbursements when the utility allowance is greater than the TTP.)

Example – Calculating Tenant Rent

TTP:	$225
Utility allowance:	-$ 75
Tenant rent:	$150

B. Assistance Payments

The assistance payment is the amount the owner bills HUD every month on behalf of the tenant. The assistance payment covers the difference between the TTP and the gross rent. It is the subsidy that HUD pays to the owner.

1. Housing Assistance Payment (HAP) is the assistance payment made by HUD to owners with units receiving assistance from the Section 8 program.

Example – Calculating HAP

Gross rent	$564
TTP	- $175
HAP	$389

2. Rental Assistance Payment (RAP) is the assistance payment made by HUD to owners for units receiving assistance through the RAP program.

3. Rent Supplement payment is the assistance payment made by HUD to owners for units receiving assistance through the Rent Supplement program.

4. Project Assistance Payment (PAC) is the assistance payment made by HUD for assisted units in a Section 202 project for nonelderly disabled families and individuals (also referred to as Project Assistance Contract [PAC] projects).

5. Project Rental Assistance Payment (PRAC) is the assistance payment made by HUD for assisted units in Section 202 or Section 811 properties with a Project Rental Assistance Contract (PRAC).

C. Utility Reimbursement

When the TTP is less than the utility allowance, the tenant receives a utility reimbursement to assist in meeting utility costs. The tenant will pay no tenant rent. The utility reimbursement is calculated by subtracting the TTP from the utility allowance. Refer to paragraph 9-13 for more information on utility reimbursements.

D. Section 8 Minimum Rent

Tenants in properties subsidized through the Section 8 program must pay a minimum TTP of $25.

***NOTE:** Minimum rent does not apply to Section 202 PAC, Section 202 PRAC, Section 811 PRAC, RAP, Rent Supplement, Section 221(d)(3) BMIR or Section 236 programs.*

1. The minimum rent is used when 30% of adjusted monthly income and 10% of gross monthly income, and the welfare rent where applicable, are all below $25.

2. The minimum rent includes the tenant's contribution for rent and utilities. In any property in which the utility allowance is greater than $25, the full TTP is applied toward the utility allowance. The tenant will receive a utility reimbursement in the amount by which the utility allowance exceeds $25.

Example – Utility Reimbursement for a Tenant Paying Minimum Rent

The Nguyen family qualifies for the minimum total tenant payment of $25. The family pays its own utility bills. The utility allowance for the unit is $75 a month. The owner sends the Nguyen family a check each month for $50 ($75-$25) as a utility reimbursement. The Nguyen family does not pay any tenant rent to the owner.

3. Financial hardship exemptions.

   a. Owners must waive the minimum rent for any family unable to pay due to a long-term financial hardship, including the following:

      – The family has lost federal, state, or local government assistance or is waiting for an eligibility determination.

      – The family would be evicted if the minimum rent requirement was imposed.

- The family income has decreased due to a change in circumstances, including but not limited to loss of employment.
- A death in the family has occurred.
- Other applicable situations, as determined by HUD, have occurred.

b. Implementing an exemption request. When a tenant requests a financial hardship exemption, the owner must waive the minimum $25 rent charge beginning the month immediately following the tenant's request and implement the TTP calculated at the higher of 30% of adjusted monthly income or 10% of gross monthly income (or the welfare rent). The TTP will not drop to zero unless those calculations all result in zero.

(1) The owner may request reasonable documentation of the hardship in order to determine whether there is a hardship and whether it is temporary or long term in nature. The owner should make a determination within one week of receiving the documentation.

(2) If the owner determines there is no hardship as covered by the statute, the owner must immediately reinstate the minimum rent requirements. The tenant is responsible for paying any minimum rent that was not paid from the date rent was suspended. The owner may not evict the tenant for nonpayment of rent during the time in which the owner was making the determination. The owner and tenant should reach a reasonable repayment agreement for any back payment of rent.

(3) If the owner determines that the hardship is temporary, the owner may not impose the minimum rent requirement until 90 days after the date of the suspension. At the end of the 90-day period, the tenant is responsible for paying the minimum rent, retroactive to the initial date of the suspension. The owner may not evict the tenant for nonpayment of rent during the time in which the owner was making the determination or during the 90-day suspension period. The owner and tenant should reach a reasonable repayment agreement for any back payment of rent.

Example – Temporary Hardship Schedule

Due to the death of his wife, Yung Kim took a six-week leave of absence from his part-time job. He requests a financial hardship exception. The owner, Oak Knoll Management, reviews his request and determines that the hardship is not long term. Yung Kim and Oak Knoll Management implement the following schedule:

• Current TTP	$25
• Hardship request received	July 15
• Owner grants temporary hardship	July 20
• August TTP	$0
• September TTP	$0
• October TTP	$0
• 90-day period ends Total balance due 3 x $25	October 15 $75
• Tenant agrees to pay $10 extra per month for seven months and $5 extra on the eighth month.	
• Monthly payment for seven months November – May TTP $25 + $10	$35
• June TTP $25 + $5	$30
• July TTP	$25

(4) If the hardship is determined to be long term, the owner must exempt the tenant from the minimum rent requirement from the date the owner granted the suspension. The suspension may be effective until such time that the hardship no longer exists. However, the owner must recertify the tenant every 90 days while the suspension lasts to verify that circumstances have not changed. The length of the hardship exemption may vary from one family to another depending on the circumstances of each family. The owner must process an interim recertification to implement a long-term exemption. Owners must maintain documentation on all requests and determinations regarding hardship exemptions.

E. Welfare Rent

1. The term "welfare rent" applies only in states that have "as-paid" public benefit programs. A welfare program is considered "as-paid" if the welfare agency does the following:

   a. Designates a specific amount for shelter and utilities; and

b. Adjusts that amount based upon the actual amount the family pays for shelter and utilities.

2. The maximum amount that may be specifically designated for rent and utilities is called the "welfare rent." See below for an example.

Example – Calculating Welfare Rent

Published maximum for shelter and utilities:	$200
Amount of welfare assistance for other needs:	$220
Other income:	$100
Monthly income =	$520
"Welfare rent"=	$200

5-27 Calculating Assistance Payments for Authorized Police/Security Personnel

A. The amount of the monthly assistance payment to the owner is equal to the contract rent minus the monthly amount paid by the police officer or security personnel. HUD will not increase the assistance payment due to nonpayment of rent by the police officer or security personnel.

NOTE: The owner is not entitled to vacancy payments for the period following occupancy by a police officer or security personnel.

B. For police/security personnel whose income exceeds the income limit for the property, the rent is set by the owner.

1. The determination of the rent amount in such circumstances should take into consideration the income of the officer, the location of the property, and rents for comparable unassisted units in the area.

2. Owners should establish a rent that is attractive to the officer, but not less than what the officer would pay as an eligible Section 8 tenant.

3. Owners are expected to use a consistent methodology for each property when establishing the rents for officers in these circumstances.

5-28 Calculating Tenant Contribution for "Double Occupancy" in Group Homes

A. Double Occupancy

Some group homes for disabled residents provide units that may be shared by unrelated single tenants. The calculations for tenant contribution and for the assistance payment vary depending on whether the project is a Section 202/8 or a Section 811.

B. Total Tenant Payment

In both Section 202/8 and Section 811 group homes, each tenant in a double occupancy room is treated as a separate family in the calculation of TTP. Each resident is entitled to any deductions he or she would receive if occupying a single room, including the $400 elderly/disabled family deduction.

Example – TTP Calculation for Double Occupancy

Resident A:	
Annual income	$5,200
Elderly family deduction	- $400
Medical expense deduction	- $900
Annual adjusted income	$3,900
Monthly adjusted income	$325 ($3,900/12 months)
30% of monthly adjusted income	$98
10% of monthly gross income	$43
Minimum rent	$25
TTP for Resident A =	$98
Resident B:	
Annual income	$3,600
Elderly family deduction	- $400
Medical expense deduction	- $2,480
Annual adjusted income	$720
Monthly adjusted income	$60 ($720/12 months)
30% of monthly adjusted income	$18
10% of monthly gross income	$30
Minimum rent	$25
TTP for Resident B =	$30

C. Contract Rent and Assistance Payment in Section 202/8 Group Homes

1. In Section 202/8 group homes, the contract rent for a room shared by two occupants is split between the two tenants.

2. The assistance payment for the Section 202/8 double occupancy room is calculated separately for each tenant based on half of the contract rent for the unit.

Example – Assistance Payment, Section 202/8 Double Occupancy

Contract rent for the unit	$800
Half of the contract rent for the unit	$400
TTP for Tenant A =	**$98**
Assistance payment for Tenant A is $400 less **$98 = $302**	
TTP for Tenant B =	$30
Assistance payment for Tenant B is $400 less $30 =	$370

3. If the tenant rent for either tenant exceeds half of the contract rent, that tenant's rent will be capped at half of the contract rent. In the Section 202/8 double occupancy room, half of the contract rent is the maximum rent one occupant can pay.

Example – Section 202/8 Double Occupancy

Tenant A has an increase in income changing the monthly adjusted income to $1,500. 30% of $1,500 equals $450. Tenant A is no longer eligible for assistance. Tenant A's rent is capped at $400, which represents the maximum Tenant A will pay.

Gross rent for unit	$800
Half the contract rent for the unit	$400
**TTP for Tenant A	$450
Assistance Payment for Tenant A	-0-
Rent Tenant A will pay	$400**

4. Owner's rent-calculation software must reflect the split-unit rent and contain unit numbers that provide a distinction between tenants (e.g., unit 101A, 101B).

D. ****Operating Cost** and Assistance Payment in Section 811 Group Homes**

1. **In a Section 811 group home, the operating cost for a room shared by two occupants is split between the two tenants.

2. The assistance payment for the Section 811 double occupancy room is calculated separately for each tenant based on half of the operating cost for the unit.**

3. In a Section 811 property, each tenant is certified separately and pays the greater of 30% of monthly adjusted income, 10% of monthly annual income, or the welfare rent.

4. In the Section 811 double occupancy unit, both occupants will pay the calculated TTP amount **even if it exceeds their portion of** the operating **cost** for the unit.

Example – Calculating the Assistance Payment for a Double Occupancy Unit in a Section 811 Group Home

Operating **cost** for unit	$310
**Half of the operating cost for the unit	$155**
TTP Tenant A =	$160
**Assistance Payment for Tenant A	$(5)**
TTP Tenant B =	$75
**Assistance Payment for Tenant B	$80

Although the Assistance Payment for Tenant A is zero, the voucher must indicate that $5 over the operating cost was collected for rent. This is indicated by bracketing the ($5.)**

5. **Owner's rent-calculation software must reflect the split-unit operating cost and contain unit numbers that provide a distinction between tenants (e.g., unit 101A, 101B).**

Example – Section 811 Total Tenant Payments

Operating **cost** for the unit	$310
One half of operating cost	$155**
TTP Tenant A =	$330
**Assistance Payment for Tenant A	($175)**
TTP Tenant B =	$240
Assistance payment **for Tenant B	($85)

E. Calculating Rent at Change in Occupancy

1. If there is a change in the number of individuals occupying the double occupancy unit, the assistance payment for the whole unit may change.

2. In a Section 202/8 **or a Section 811 PRAC** double-occupancy room, the rent and assistance payments are calculated as if each tenant occupied a separate unit each with a rent equaling half of the contract rent **or operating cost** for the unit. If one resident moves out, the TTP and assistance payment calculations for the remaining resident remain the same. The other half of the unit is treated like a vacant unit: there is no **assistance** payment but the owner may be eligible for vacancy loss claims for the vacated half of the unit.

Example – Section 202/8 Calculation at a Change in Occupancy

Contract Rent	$800
Half of the contract rent	$400
Tenant A Tenant Rent	**$98**
Tenant B Tenant Rent	$30

Tenant A moves out.

Assistance Payment for Tenant B is calculated using half of the contract rent = $400 less the Tenant Rent for Tenant B $30 = $370 housing assistance payment.

There is no HAP payment for the half of the unit vacated by Tenant A. It is vacant. But, the owner may request a vacancy loss payment if appropriate.

Example – Section 811 Calculation at a Change in Occupancy

Operating Cost	$310
Half of the operating cost	$155
Tenant A Tenant Rent	$160
Tenant B Tenant Rent	$75

Tenant A moves out.

Assistance Payment for Tenant B is calculated using half of the operating cost = $155 less the Tenant Rent for Tenant B $75 = $80 housing assistance payment.

There is no Assistance Payment for the half of the unit vacated by Tenant A. It is vacant. Even though Tenant A was paying more than half of the operating cost for the unit at move-out, the owner may request a vacancy loss payment if all other vacancy claim requirements have been met.

5-29 Calculating Tenant Contribution for Section 236 and Section 221(d)(3) Below Market Interest Rate (BMIR)

A. Tenant's Rent Contribution

The tenant's contribution to rent in the Section 236 and Section 221(d)(3) BMIR programs is based on the cost to operate the property and the income of the family. Figure 5-7 presents the rules for determining the tenant rent in these two programs.

1. Section 236 property. Every Section 236 property has a HUD-approved basic rent and market rent. Basic rent is the minimum rent all Section 236 tenants must pay. It represents the cost to operate the property after HUD has provided mortgage assistance to reduce the mortgage interest expense. The market rent represents the amount of rent the owner would have to charge, if the mortgage were not subsidized. Tenants pay a

percentage of their income towards rent, but never pay less than the basic rent or more than the market rent for the property.

When a tenant pays more than basic rent, the difference between the tenant's rent and basic rent is called "excess income." Excess income is an amount that exceeds what the owner needs to operate the property and is subject to specific requirements. Refer to HUD Handbook 4350.1, *Multifamily Asset Management and Project Servicing*, and other current HUD notices for guidance on handling excess income. Although a tenant may pay more than basic rent, no tenant in a Section 236 property will pay more than the market rent for the property.

Example – Calculating Excess Income

Rent for Tenant A (30% of Tenant A's income):	$350
Basic rent	-$300
Excess Income	$50

2. Section 221(d)(3) BMIR property. There is no rent calculation for tenants in a Section 221(d)(3) BMIR property. HUD approves a BMIR rent that all of the tenants must pay. The federal assistance in the BMIR property is provided through a below market interest rate for the mortgage loan. Applicants must meet income eligibility standards to be admitted to a BMIR property. After move-in, if a tenant's annual income goes above 110% of the BMIR income limit, the tenant must pay 110% the BMIR rent.

3. BMIR cooperative. If a BMIR cooperative member's annual income exceeds 110% of the BMIR income limit at the time of recertification, the cooperative must levy a surcharge to the member. See the definition of market rent in the Glossary for an explanation of the market carrying charge for over-income cooperative members.

B. Timeframe for Calculating Rent

Owners calculate rent at three points in time.

1. Owners must calculate rent prior to occupancy by an applicant.

2. Owners must calculate rent as part of an annual recertification. Refer to Chapter 7, Section 1 for information on annual recertification of income.

3. Owners of Section 236 properties must calculate rent if a tenant reports a change in income, allowances, or family composition. Refer to Chapter 7, Section 2 for information on interim recertifications of income.

Figure 5-7: Tenant Contributions for the Section 236 and Section 221(d)(3) BMIR

Section 236

Section 236 without Utility Allowance

- Tenant rent is the greater of:
  - 30% of monthly adjusted income; or
  - Section 236 basic rent.
- Tenant rent may not be more than the Section 236 market rent.

Section 236 with Utility Allowance

- Tenant rent is the greater of:
  - 30% of monthly adjusted income less the utility allowance; or
  - 25% of monthly adjusted income; or
  - Basic rent.
- Tenant rent may not be more than the Section 236 market rent.

Section 221(d)(3) BMIR

- At initial certification, the tenant pays the BMIR rent.
- At recertification, the tenant's annual income is compared to the BMIR income limits. If the tenant's annual income is:
  - Less than or equal to 110% of the BMIR income limit, the tenant pays the BMIR rent;
  - Greater than 110% of the BMIR income limit, the tenant pays 110% of the BMIR rent.

5-30 Determining Tenant Contribution at Properties with Multiple Forms of Subsidy

A. At many multifamily properties different kinds of subsidies have been combined. For many years, tenant-based Section 8 subsidies have been added to properties built with Section 202 loans or financed with Section 236 and Section 221(d)(3) mortgage subsidies. Recently, the Low Income Housing Tax Credit program has been combined with a wide range of programs, from Section 202 projects with Section 8 already in place (Section 202/8) to housing choice voucher assistance.

B. Although each of the programs combined within one property may have a different formula for determining tenant payments, it is generally possible to determine the correct rent for a family by identifying the available program for which that family is eligible that will provide the best option—or the lowest rent—for the tenant. The one exception to this can be at the recertification of a Section 8 or Rent Supplement family in a property with Low Income Housing Tax Credits. If the family's income has increased since move-in to a point that the assisted rent exceeds the Low Income Housing Tax Credit rent, that family will have to make a choice between the lower tax credit rent and the security of continuing on the rental assistance program.

C. The tenant rent at properties assisted under more than one program is generally the lowest rent available for which the tenant is eligible.

1. Section 202/Section 8. In a Section 202 property with Section 8 tenant-based assistance, a tenant eligible for Section 8 will pay the tenant rent based on the Section 8 rent formula. If that tenant's income increases to the point that its TTP equals or exceeds the Section 8 contract rent, the family would no longer be eligible for the tenant based assistance.

2. Section 236/Section 8. A family with a Section 8 subsidy in a Section 236 property will pay the Section 8 tenant rent unless, at recertification, the family's TTP equals or exceeds the Section 8 contract rent. Thereafter, the family will pay the tenant rent based on the Section 236 rent formula. A family living in a Section 236 property receiving Rent Supplement assistance would also stop receiving Rent Supplement assistance at the point the family's TTP increased to the level of the rent supplement contract rent. Thereafter the family will pay the tenant rent based on the Section 236 rent formula.

3. Section 221(d)(3) BMIR with Section 8. A family receiving Section 8 assistance at a BMIR project would continue to pay the tenant rent based on the Section 8 rent formula until the TTP equaled or exceeded the BMIR rent. Thereafter, the family would pay rent based on the BMIR rent formula.

D. In some instances, a tenant will not be eligible for the program offering the lowest rent, or a subsidy under that program will not be available for every unit or every tenant.

Sometimes, Section 8 subsidies are not available for the unit size the family needs, and the family must wait for a subsidy for the appropriate unit size. The owner's contract with HUD for the Section 8 assistance allocates Section 8 funding by unit size, and the owner is required to subsidize families based on the unit sizes allocated. If the owner was allocated 10 two-bedroom subsidies and has assigned those subsidies to 10 two-bedroom families, the owner cannot use an available three-bedroom subsidy to assist an 11th two-bedroom family. If the owner has determined that the bedroom distribution in its contract does not match the need in the project, the owner can ask HUD for a contract amendment to revise the unit size designations of the subsidy awarded.

E. In some instances, a family will not be eligible for a lower rent program available at the property.

For example, a family in a BMIR project with Section 8 may be financially stretched when paying the BMIR rent but may not be income-eligible for the lower-rent Section 8 program.

5-31 Procedures for Calculating Rent

A. Owners must calculate tenant rent payments electronically using on-site software or a service provider. Data used to determine the rent are based on information certified as accurate by the family and independently verified.

B. The owner's computer software calculates rent based on the appropriate formulas for the tenant's unit and produces a printed copy of the **HUD-50059** to be signed by the tenant and the owner. The owner must produce a printed report in an easily read and understood format that contains all of the information used to calculate the tenant's rent.

C. The tenant and the owner sign a copy of the report containing a statement certifying the accuracy of the information. The certification statements are provided on the **form HUD-50059 in Appendix 7-B.** Additional information on the **HUD-50059** and the certifications can be found in Chapter 9.

D. The owner must give a copy of the printed **HUD-50059** with the required signatures to the tenant and place another copy in the tenant file.

E. The **HUD-50059 is** then transmitted electronically to TRACS either directly or through the Contract Administrator. Refer to Chapter 9 for information on **the HUD-50059** requirements.

F. **In all cases, the computer generated HUD-50059 must include the required tenant signatures and owner signatures prior to submitting the data to the Contract Administrator or HUD. The owner may consider extenuating circumstances when an adult family member is not available to sign the HUD-50059, for example, an adult serving in the military, students away at college, adults who are hospitalized for an extended period of time, or a family member who is permanently confined to a nursing home or hospital. The owner must document the file why the signature(s) was not obtained and, if applicable, when the signature(s) will be obtained.**

Chapter 5 Exhibits

5-1. Income Inclusions and Exclusions

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e5-1HSGH.pdf

5-2. Assets

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e5-2HSGH.pdf

5-3. **Examples** of Medical Expenses That Are Deductible and Nondeductible

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e5-3HSGH.pdf

5-4. **Sample** Certification for Qualified Long-Term Care Insurance Expenses

http://www.hud.gov/offices/adm/hudclips/forms/files/90101.pdf

5-5. Form HUD-9887, *Notice and Consent for the Release of Information to HUD and to a PHA*

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e5HSGH.pdf

5-6. Form HUD-9887-A, *Applicant's/Tenant's Consent to the Release of Information – Verification by Owners of Information Supplied by Individuals Who Apply for Housing Assistance*

See 5-5 above.

5-7. HUD Fact Sheet – Verification of Information Provided by Applicants and Tenants of Assisted Housing

See 5-5 above.

5-8. Tenant Rent Formulas

http://www.hud.gov/offices/adm/hudclips/handbooks/hsgh/4350.3/43503e5-8HSGH.pdf